

Trial Hearing  
Witness: KEN-OTP-P-0613

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. William Samoei Ruto  
5 and Joshua Arap Sang - ICC-01/09-01/11  
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccia and  
7 Judge Robert Fremr  
8 Trial Hearing  
9 Thursday, 19 June 2014  
10 (The hearing starts in open session at 9.37 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
15 Court officer, please call the case.  
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President. Situation in  
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto and  
18 Joshua Arap Sang, ICC-01/09-01/11.  
19 We are in open session.  
20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Any changes in appearances?  
21 MR STEYNBERG: Good morning, your Honours, Mr President. For the  
22 Prosecution, only by the absence of Mr Peter Schotsman this morning.  
23 MR NARANTSETSEG: Good morning, Mr President, your Honours.  
24 On our side, our team remains the same. Thank you.  
25 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the

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1 same. Thank you.

2 MS ALAGENDRA: Good morning, Mr President, your Honours. The defense of  
3 Mr Ruto's team remains the same, and just to announce that Mr Ruto is in court  
4 today.

5 PRESIDING JUDGE EBOE-OSUJI: That's noted.

6 Witness, welcome back to the stand. Mr Garcia will continue his  
7 examination-in-chief of you.

8 I also wish to remind you to keep in mind what I told you earlier. Listen carefully to  
9 the question. You understand the question that is being asked of you and then just  
10 think about the answer and just answer that question. Once you finish answering it  
11 as briefly as possible but as completely as you can, you stop there and wait for the  
12 next question.

13 Also remember to observe the pauses between the question being asked of you and  
14 you beginning to answer the question. We need you to think about counting in your  
15 mind up to about five, for five seconds, to allow the interpreters to do their work  
16 properly and the court reporters as well. Thank you.

17 WITNESS: KEN-OTP-P-0613 (On former oath)

18 THE WITNESS: Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: We are still in open session, Mr Garcia?

20 MR GARCIA: Yes. Good morning, your Honours. Indeed we can continue in  
21 open session for a bit, and then I'll ask to go in private session.

22 PRESIDING JUDGE EBOE-OSUJI: And you did say that you hoped to finish by  
23 lunch break today?

24 MR GARCIA: Indeed, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Proceed.

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1 QUESTIONED BY MR GARCIA: (Continuing)

2 Q. Good morning, Witness.

3 A. Good morning.

4 Q. Now, just before I ask you additional questions, I just want to situate you.

5 When we left off yesterday you were speaking to us about how you were observing

6 on the morning of 31 December 2007 Kalenjin youth coming from Sugoi and heading

7 to Turbo town.

8 Now, in relation to Sugoi, could you tell the Court what is Sugoi? Is this a village?

9 Is it a city? What is it exactly?

10 A. Sugoi is a location.

11 Q. And what is the main ethnic group in Sugoi?

12 A. Kalenjin.

13 Q. And approximately can you tell the Court what is the distance from Turbo town

14 to Sugoi? And if you're not good with distances, how much time would it take for a

15 person to go let's say walking from Turbo town to Sugoi?

16 A. If I may say is a -- there is a river which is in between Sugoi and to Turbo town,

17 so it's not very far from Turbo town. But of course Sugoi is a big, not small, if I say

18 location. It is big.

19 PRESIDING JUDGE EBOE-OSUJI: Counsel, I do not want to interrupt your flow,

20 but can we clarify exactly what this concept of location is in the context in which it is

21 being used so that it is not something that everybody can relate to? You said

22 "village" or "town" or "city." Witness said "location." Now she's telling us that

23 location is big. So what exactly is this?

24 MR GARCIA: I'm guided by the Chamber, yes, indeed.

25 PRESIDING JUDGE EBOE-OSUJI: You might even agree amongst yourselves

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1 from -- your colleagues can also suggest to see if we can get --

2 MR GARCIA: I'm going to ask the witness then.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 MR GARCIA: She'll be able to clarify, I'm sure.

5 Q. Now, Witness, you've heard the Court's comment. Can you just explain to us  
6 briefly how would you compare a location to a village or to a city?

7 A. A location is a -- if I may say, there is Turbo division, and then it has locations in  
8 it like Sugoi location, Tapsagoi location, Ngenyilel. So all is that Turbo division.

9 MS ALAGENDRA: Your Honour, if I may assist? If I may assist, your Honour, we  
10 have no objection if counsel wants to lead on these matters.

11 MR GARCIA:

12 Q. Now, Witness, the question that I had asked before is if someone were to leave  
13 from Turbo town direction and to arrive at Mr Ruto's house in Sugoi, how much time  
14 would that take walking?

15 A. To walk to Honourable Ruto's home is very far from Turbo town. But what  
16 I was saying is I didn't mean that the youth were coming from Ruto's home. No. It  
17 was coming -- they were coming from Kosidai (phon) Centre, which is in Sugoi  
18 location.

19 Q. We understood that, Witness. But it's still the same question: How much  
20 time would it take a person walking from Turbo town to the house of Mr Ruto in  
21 Sugoi?

22 A. Approximately from Turbo town walking, this time is like two hours, yeah.

23 Q. Now, let's get back to these youths that you had observed on that day on 31  
24 December in the morning. Can you tell us approximately how many of them were  
25 there? How many of them did you see?

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1 A. It was five to ten.

2 Q. And from the distance that you were seeing them, were you able to determine  
3 how they were dressed?

4 A. Yes. They were in normal dresses.

5 Q. Were you able to determine from where you were seeing them if they were  
6 carrying anything, if they had anything in their hands?

7 A. No.

8 MR GARCIA: Your Honours, could we go into private session, two minutes?

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 (Private session at 9.47 a.m.)

11 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR GARCIA:

14 Q. Now, Witness, we understand from your testimony that you were (Redacted)  
15 (Redacted) What did you do after having seen these  
16 youth arrive?

17 A. As I told you, it is very far a bit. You can see people moving and I saw houses  
18 also burn.

19 Q. You mentioned yesterday during your testimony, Witness, that these houses  
20 were Kikuyu houses. How did you know that?

21 A. I have been there once. (Redacted)

22 Q. And the houses that we're speaking about, yesterday you mentioned three to  
23 five houses that were burning, these houses were located where approximately, if you  
24 can give us approximately where they were located in relation to Turbo town?

25 A. It is between before Kobil and near the bridge, Sosiani Bridge. It is between

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1 there on your left going to Turbo.

2 MR GARCIA: Now, just for the comprehension and further clarification, I'd ask  
3 Defence counsel if they have any objection to us showing to the Court the sketch that  
4 was made by the witness during the preparation session. It's KEN-OTP-0131-0872,  
5 it's a confidential document, and it's in the bundle at tab 3B. If there is no objection  
6 from Defence counsel, I'd like that document, that sketch to be put on the screen  
7 before the witness so she can look at it.

8 MS ALAGENDRA: Yes, we have no objections.

9 MR KIGEN-KATWA: We have no objection.

10 MR GARCIA: So simply for the record it's document KEN-OTP-0131-0872.

11 PRESIDING JUDGE EBOE-OSUJI: Please. Mr Garcia, I'm advised you will have to  
12 do this the old-fashioned way. Apparently there is some difficulty with the  
13 computer system, it cannot now be pulled up on the screen.

14 MR GARCIA: That's fine. I have a clean copy that can be given to the witness and  
15 we can follow that way. So for the record this is a confidential document and when  
16 we will seek to be tendering it that's the -- that will be the confidentiality level.

17 Q. Now, Witness, do you see the sketch before you on the document?

18 A. Yes, but for the Sugoi youth it's not here.

19 Q. That's fine I understand that, Witness, but this is your sketch, it's a sketch that  
20 you drew for the Prosecution during the witness preparation session; is that correct?

21 A. Correct.

22 Q. Now, just so that we can all be clear, on this sketch, if you look at the right-hand

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Yes.

2 Q. And if we look towards the bottom of the sketch there's an indication that says  
3 "Besiebor"; do you see that?

4 A. Yes.

5 Q. And there's a "V", and in that V there's little squares. Is that -- am I correct in  
6 stating that that's Besiebor centre, a shopping centre of sorts?

7 A. Correct.

8 Q. And now if you go up to the top part of the sketch there's an indication that says  
9 "Turbo town", that's the -- that's Turbo town that you've indicated there, and you've  
10 also indicated "Sosiani River" to the right; is that correct? That's the river that runs  
11 across that main -- main street?

12 A. Yeah. Yes.

13 Q. All right. So when you stated yesterday and today, when you were speaking  
14 about these Kalenjin youth that you were observing, and you stated at one point they  
15 were coming from Sugoi, on this map -- on this sketch that you've drawn for the  
16 Prosecution, from which direction would they be coming from? Is it from the  
17 direction to the right of Turbo town in front of you or to the -- or, to the left?

18 A. The sketch here I draw it doesn't show the main road, I mean Uganda Road.  
19 It's only from Besiebor up to the bridge. We have two bridges, there is a bridge from  
20 Tapsagoi to Turbo town and I'm talking about Uganda Road.

21 Q. Just so that it can be clear for the Chamber, am I correct in stating that  
22 Uganda Road is the big -- the main road that passes -- that cuts through  
23 Turbo -- Turbo town; is that correct?

24 A. Correct.

25 Q. And if you take that road, you can either go to Uganda in one direction, or in

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1 the opposite direction it goes to Eldoret; is that correct?

2 A. Correct.

3 Q. Thank you. So we'll just keep -- please, just keep that map with you.

4 Now, I'd like to know after you had seen -- after you had seen these youth arrive and

5 the houses burning, what did you do? (Redacted) at that point

6 but what did you do?

7 A. Actually, I did nothing (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. Did you come to know afterwards why everything was so silent at that point in

12 time?

13 A. It only assuming that maybe they were in a meeting, but I didn't know.

14 Q. What happened afterwards, Witness?

15 PRESIDING JUDGE EBOE-OSUJI: Do we need to remain in private?

16 MR GARCIA: A very limited amount of time, your Honour. Immediately after I

17 just get through a certain couple of questions, we can move into public and I'll have a

18 good amount of evidence to lead in public.

19 THE WITNESS: At around 3 or 4 p.m. I saw a group of youth coming from Besiebor

20 going towards Turbo town.

21 MR GARCIA:

22 Q. Okay. When you're saying a group of youth, how many -- how many youth

23 approximately?

24 A. Like 50 to 100.

25 Q. And were you able to determine of what ethnic group these youths were?



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1 A. I assume it was Kalenjini.

2 Q. For what reason? Why did you assume they were Kalenjini?

3 A. Because in Tapsagoi most of the people who are living there is Kalenjini.

4 Q. Now, when you observed these youth arriving, what did you do?

5 A. There was nothing I could do but I just saw them going towards near police  
6 station. As you see in the sketch there is a road going up and there is a small, small  
7 road which is going in through -- through Catholic church going to a place here called  
8 Fort Jesus. So I saw them. They divided, go into three-four, three-five groups  
9 everyone and then they went through police station -- behind police station, some  
10 went towards Fort Jesus. They didn't reach police post, not station actually, police  
11 post.

12 Q. Now, what was your reaction to this upon seeing these youth arriving and  
13 heading towards Turbo town?

14 A. It was nothing I could do. I was just seeing what happened but later on -- but  
15 not that time, later on at around 8.

16 Q. We're going to -- we're going to get to that point in a second, Witness. I'd just  
17 like you to bear with me for a while. Did you feel fearful or were you scared of  
18 anything of these people, these youth that were arriving?

19 A. Yes because I saw the other houses was burned in the -- at around 11, so  
20 I was -- what -- what happen -- what's going to happen again, but I could not  
21 conclude because I didn't know actually because --

22 Q. Now, Witness, did you know any of the --

23 MS ALAGENDRA: Your Honours, if I can just interrupt. I would just advise my  
24 learned friend not to lead on such matters, please.

25 MR GARCIA:

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1 Q. Witness, did you -- did you know anyone who was part of this group of youths  
2 who were advancing to Turbo town?

3 A. No.

4 Q. (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 A. (Redacted)

13 Q. All right, Witness, we will come back to that afterwards. I'm just going to ask  
14 the Court to go into public session just so I can lead evidence regarding the  
15 description of the attackers, et cetera, and what happened?

16 PRESIDING JUDGE EBOE-OSUJI: Before we do that, Witness, still on this sketch  
17 that the Prosecutor showed you, I notice the Prosecutor had oriented the sketch in his  
18 questions so that the Y-junction, which is at the bottom of the page, the Y-junction  
19 and the words "Besiebor" at the bottom and the words "Turbo town" appear on top of  
20 the page. So let's keep it that way. And we see -- is that Sosiani River?

21 THE WITNESS: Correct, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Sosani, S-O-S-A-N-I. Where would be the  
23 direction of Sugoi on this map? Do we see any road indicated that one may say that  
24 is a road that takes one to Sugoi?

25 THE WITNESS: It's not, Mr President.

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1 PRESIDING JUDGE EBOE-OSUJI: In what general direction would it be? Would it  
2 be towards the top or bottom?

3 THE WITNESS: Top.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.

5 MR GARCIA: Your Honour, we have a map that we can lead in open session, I was  
6 planning to lead in public session, indicating the general direction of Sugoi. It's a  
7 Google map. I don't think the Defence has any objection to the map. I haven't seen  
8 any when we submitted our list of documents, if it's the same --

9 PRESIDING JUDGE EBOE-OSUJI: Well --

10 MR GARCIA: -- Defence stance is the same, well, then I will submit that in public.

11 PRESIDING JUDGE EBOE-OSUJI: If you want to do that, then you can, and then  
12 we'll see what the reaction of Defence counsel -- when the time -- you don't need to do  
13 that now for my purposes, unless you feel you might as well do it.

14 MR GARCIA: Your Honours, I understand that the Chamber was inquiring as to the  
15 direction of Sugoi. We have a map. It's not -- it's a map from -- it's a Google map,  
16 and it has the general direction of Sugoi. It could clarify things for the Chamber.  
17 We could do that immediately upon going into public session.

18 PRESIDING JUDGE EBOE-OSUJI: All right. We will do that, and we will then go  
19 into public session. But before we do that, so you will be asking questions in a  
20 general way so that the witness knows that the point of the exercise to be done in  
21 public session is for you to point out where Sugoi is and that sort of thing, (Redacted)  
22 (Redacted) Okay.

23 MR GARCIA: For the benefit of Defence counsel, it's KEN-OTP-0097-0393.

24 MS ALAGENDRA: Your Honour, perhaps before we go --

25 PRESIDING JUDGE EBOE-OSUJI: Is it part of the bundle?

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1 MR GARCIA: Yes, it is part of the bundle.

2 MS ALAGENDRA: Perhaps before we go into public session, your Honour, my  
3 learned friend may want to deal with whether or not he wants to admit this drawing  
4 as an exhibit.

5 MR GARCIA: Your Honour, we can do that right now, but I imagine the witness  
6 will have to refer to it again during her testimony. It's to the Chamber's discretion,  
7 we can either tender it immediately and it will be in evidence, or we can do that  
8 nearing the end of her -- of this session.

9 PRESIDING JUDGE EBOE-OSUJI: It's always best to tender a document as soon as  
10 it is treated so then from then on it can be referred to safely than to wait until the end  
11 to do it.

12 MR GARCIA: I just didn't want to interrupt of the flow of the testimony of the  
13 witness. But then I'll ask for the document to be tendered into evidence, Prosecution  
14 exhibit.

15 PRESIDING JUDGE EBOE-OSUJI: I take it you have no objection to this sketch  
16 coming in, Defence counsel?

17 MS ALAGENDRA: Your Honour, we have no objection to the extent that this is the  
18 drawing done by Madam Witness, and she's indicated certain locations, but we do  
19 not necessarily agree as to scale. And if the time comes and we're required to put up  
20 a Defence case, we'll be inviting the Chamber to visit this location, your Honour.

21 MR KIGEN-KATWA: We do not have an objection, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next in the  
23 Prosecution exhibits.

24 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0131-0872 marked  
25 as confidential will be given the number EVD-T-OTP-00098.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will then go into public session.

2 Mr Garcia will be putting that --

3 Court officer, would the overhead projector work even though the computer is not  
4 working?

5 (Open session at 10.08 a.m.)

6 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 (Pause in proceedings)

9 MR GARCIA:

10 Q. Now, Witness, before we move on and I ask you some questions about what  
11 you saw of these youths who were approaching, and you said about three or four, I  
12 just want to come back to this question of Sugoi.

13 And if it's possible, would it be possible to put on the screen document

14 KEN-OTP-0097-0393?

15 THE COURT OFFICER: (Interpretation) Mr Garcia, could you confirm the  
16 document is public?

17 MR GARCIA: (Interpretation) Indeed, it is public.

18 Q. (Speaks English) Now, Witness, this is -- do you see the map before you on the  
19 screen?

20 A. Yes.

21 Q. Now, do you see that there is an indication there, you see "Turbo." You see  
22 Somken Petrol Station. And then over towards the right-hand, bottom right, you see  
23 a place call Sugoi, and there's an "X." Is that in general the direction of Sugoi from  
24 Turbo town? Is that accurate?

25 A. Correct.

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1 Q. Thank you.

2 MR GARCIA: Your Honours, could we have this document tendered into evidence  
3 as well as a Prosecution exhibit.

4 PRESIDING JUDGE EBOE-OSUJI: Any objection?

5 MS ALAGENDRA: No objections, your Honour.

6 MR KIGEN-KATWA: No objection.

7 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next in the  
8 Prosecution exhibits.

9 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0097-0393, public,  
10 will have the number EVD-T-OTP-00099.

11 PRESIDING JUDGE EBOE-OSUJI: Can we briefly go back into private session.

12 And leave the map on the screen. But we'll go into private session.

13 (Private session at 10.12 a.m.)

14 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I'm afraid this doesn't clarify the  
16 concern I had -- well, not a concern, what I wanted to clarify at the time with my  
17 question to the witness. Yes, it does indicate the general direction of Sugoi vis-à-vis  
18 Turbo, but if you were to place the witness's sketch as an inset onto this map, where  
19 would that go and in what orientation?

20 MR GARCIA: Your Honour, not to interrupt the flow, but we could look into this,  
21 and I can come back with a response, a more accurate response than one that I would  
22 be able to give you at this point.

23 PRESIDING JUDGE EBOE-OSUJI: Yes.

24 MR GARCIA: I don't want to induce the Chamber into error in any way.

25 PRESIDING JUDGE EBOE-OSUJI: That's a wise approach. We will then move on

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1 and later on see if you can come back and clarify that.

2 We go back into the public session.

3 (Open session at 10.13 p.m.)

4 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.

5 MR GARCIA:

6 Q. Now, Witness, you mentioned that you observed about 50 to 100 youths

7 arriving from the direction of Besiebor and heading to Turbo town. Were you able

8 to determine from where you were observing how they were dressed, these youths?

9 A. They were in normal dresses.

10 Q. Were you able to tell from where you were observing whether they had

11 anything in their hands?

12 A. I didn't see anything in the hands.

13 Q. Now, you mentioned that at one specific moment the group of youth split; is

14 that correct?

15 A. Correct.

16 Q. You mentioned as well that they split at the point where they reached the police

17 post; is that correct as well?

18 A. Before police post.

19 Q. And can you just explain this -- this police post? Was it a big police post?

20 How many policemen were there?

21 A. In Turbo there is a police post and then a police station. Police post is the

22 smaller one and the police station is the bigger one.

23 Q. All right. And after the -- you also mentioned that when they split, some of

24 these Kalenjins went towards their church. Are you speaking about the Turbo

25 Catholic church?

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1 A. Yeah. After the church they passed -- there are small small roads going  
2 towards Fort Jesus through Turbo church.

3 Q. And what is exactly Fort Jesus?

4 A. It's like an estate.

5 Q. Now, while these youths were advancing, the 50 to 100 youth, were you able to  
6 observe what they were doing?

7 A. No.

8 MR GARCIA: Could we go into private session, your Honour, a couple of minutes.

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 (Private session at 10.17 a.m.)

11 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR GARCIA:

14 Q. Now, Witness, after you observed the Kalenjin youth splitting, what happened  
15 after that?

16 A. Later on at night at around 8, I saw a store was burned, and the store was  
17 belonged to number 8.

18 Q. (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. And this person, person number 8, was of what ethnicity?

25 A. Kikuyu.



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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 Q. (Redacted)
- 5 (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 (Redacted)
- 11 Q. All right. Can you explain to the Court briefly how you first observed the store
- 12 burning?
- 13 A. I heard -- you know when there -- something is burning you can hear that sound
- 14 "pu, pu, pu", (Redacted) I'm able to see fire, and (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Q. Now, you say that (Redacted)
- 19 A. Yeah, but not the same day. After they loot the Galsheet, windows, because
- 20 the house was a -- it was semi-permanent house so it was hard actually to be burnt.
- 21 They looted Galsheets and windows and doors.
- 22 Q. And when you say "they", who was it that was doing this looting?
- 23 A. I'm assuming Kalenjin youths, but I didn't see anyone looting it, no.
- 24 Q. Yes, Witness, just if you can clarify. You said that they burnt, they looted
- 25 something and windows and doors?

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1 A. Galsheet, mabatis. I mean -- Galsheet is -- I mean when you roof the house,  
2 those you can put the top of the roof.

3 Q. So it's corrugated iron sheets; is that correct?

4 A. Correct.

5 Q. (Redacted)

6 (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 Q. And once you arrived there at the Turbo Catholic church, what did you do?

11 (Redacted)

12 A. When I arrived there, there were some people inside there, (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 (Redacted) What did you see exactly?

22 A. It was night and I could see there were people there, but I didn't know who  
23 were they. But later on I came to assume that it was Kikuyus - other Kikuyus - like  
24 number 9 because his house was burned also, but that one I didn't see. I came to  
25 know some other day that the house was burnt.

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(Private Session)

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1 Q. Now, before we get to number 9, can you just explain to us briefly why you  
2 assumed it was other -- other Kikuyus who were there (Redacted)  
3 (Redacted)

4 A. I assume because that time when I saw (Redacted) was burned, I  
5 noticed that there was something going on, so I assumed that way.

6 Q. Yes, but why did you assume it was people of Kikuyu ethnicity? That was  
7 more my question.

8 A. Because it was PNU supporters.

9 Q. (Redacted)  
10 (Redacted)

11 A. I went back (Redacted) I went to number 10's place (Redacted)  
12 (Redacted)

13 Q. Now, on your way back (Redacted) were you able to observe what was  
14 going on in Turbo town in the centre? Did you see anything?

15 A. Yeah. It was fire, fire, fire, fire.

16 Q. What was on fire?

17 A. You can see -- it was night, so you can see fire burning it, but you can't see what  
18 is it exactly.

19 Q. Can you tell the Court anything as to the extent of the fire? Was there a lot of it,  
20 a little?

21 A. It was little.

22 Q. Now, you mentioned as well that person number 9, the house of person  
23 number 9 was also burnt. And I understand that on your sketch, the right of your  
24 sketch we see a square and the name of the person number 9. That I understand is  
25 his house -- was his house at the time?

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1 A. Correct.

2 Q. And can you tell the Court when this house was burnt down?

3 A. I -- I didn't know exactly when, what time or when, but I came to learn it was  
4 burned before number 8 stores.

5 Q. Did you personally see that house burnt?

6 A. I didn't see it, but I came to see it when it was destroyed.

7 Q. And when was that? When approximately?

8 A. Later at -- (Redacted)

9 Q. And just to be clear for the record, this person number 9 was a person of what  
10 ethnicity?

11 A. Kikuyu.

12 Q. Now, Witness, what happened on the next day, 1 January 2008, in the morning?

13 A. If I can remember, because all places was closed actually (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 THE WITNESS: (Redacted)
- 5 MR GARCIA:
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 (Redacted)
- 11 A. (Redacted)
- 12 (Redacted)
- 13 MS ALAGENDRA: (Redacted)
- 14 (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 16 MS ALAGENDRA: (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 19 MR GARCIA:
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 (Redacted)

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1 A. (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 A. Yeah. The police arrive at church and escort Kikuyus to go to police station.

5 Q. And how do you know of this, that the police arrived at the church and escorted

6 Kikuyus? Is it something that you saw personally or is it something that was told

7 you?

8 A. I had heard that they had already gone to police station.

9 Q. And who told you this?

10 A. I can't remember.

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 Q. Now, Witness, on the --

19 MR GARCIA: Your Honours, I can go back into public for about five minutes, but

20 then I'm almost obliged to go back into private for a certain chunk of information

21 again.

22 PRESIDING JUDGE EBOE-OSUJI: We go back to the public session.

23 (Open session at 10.37 a.m.)

24 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

25 MR GARCIA:

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1 Q. Now, Witness, a question, simple one, actually: On 1 January 2008, were you  
2 able to observe what was going on in Turbo town in the centre, the houses?

3 A. Yeah, it was burning all over. You see there, you see there, but they didn't  
4 burnt houses all of them once. It was like they burnt today and then tomorrow again  
5 others because there were some houses there. It was residential houses and there  
6 was a shopping centre, businesses there.

7 Q. You say that they didn't burn the houses all at once -- all of them at once. How  
8 much time -- for how many days did this go on, the burning of houses, in Turbo  
9 town?

10 A. I'm assuming that they were looting first the property in the shopping centre or  
11 stores and then they -- after that they burn. I'm assuming that, but I am not saying  
12 that it was like that.

13 Q. I understand that, Witness, but for how many days did you observe, you  
14 personally, how many days did you observe that the houses were burning in Turbo  
15 town?

16 A. It was like five days.

17 Q. Now -- I'll let you drink your water.

18 Now, Witness, just to give us an idea, approximately how many houses were burnt or  
19 shops were burnt in this period of five days that you estimate?

20 A. I can't give the number. I don't want to lie.

21 Q. I understand that, Witness, and I appreciate that and I don't want you to induce  
22 the Court into error neither, but would it be more or less than 20? Are you able to  
23 give us -- give us that information?

24 A. Because Turbo town is from Kobil up to a place called Springbok (phon), so  
25 there was Kikuyus all that area, so the houses were burned different. I could not see

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1 even those ones, but it was -- so I can't give the figure.

2 Q. But are you able to tell us whether it was more or less than 20 houses or  
3 shoppings?

4 A. Of course it was more than 20.

5 Q. And if I were to ask you if it was more or less than 50, would you be able to give  
6 us an answer?

7 A. It was more than 50.

8 Q. And who was burning these houses, Witness?

9 A. As I told the Court, I didn't see anyone burning it, but I managed to see houses  
10 was burnt. The person who was burning, I don't know, but I assume that it was the  
11 youth, Kalenjin youth.

12 Q. Can you tell the Court why you assume it was Kalenjin youth? Just so we  
13 understand you.

14 A. I assume that because -- because of that difference of -- between ODM and PNU  
15 supporters.

16 Q. Did you see any of the looting or pillaging, you personally?

17 A. Yes. I witness someone carrying Galsheets and another one was carrying  
18 boxes - I didn't know what was inside the boxes - and then he was passing by. I  
19 managed to ask him --

20 MR GARCIA: One second, one second, Witness. Thank you for your hesitation.

21 Your Honour, if we can just go into private briefly.

22 PRESIDING JUDGE EBOE-OSUJI: We go into private session.

23 (Private session at 10.44 a.m.)

24 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

25 MR GARCIA:



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- 1 Q. Witness, you can continue. You were saying that you observed someone  
2 carrying sheets and another one carrying boxes and then he was passing by and you  
3 managed to ask him. Can you continue from there?
- 4 A. (Redacted)  
5 (Redacted)  
6 (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)  
13 (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 Q. Now, the person that you obtained -- that provided you this information, can  
17 you tell us who that was, the person that you asked, the one that was carrying the  
18 boxes?
- 19 A. I don't know who was he because he was a stranger to me.
- 20 Q. In what language did you speak to him?
- 21 A. Kalenjin.
- 22 Q. Do you remember how he was dressed?
- 23 A. He was in normal dresses.
- 24 Q. Do you remember if he had anything else, any weapons?
- 25 A. No.

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1 Q. Now, you say he was a stranger to you. When you say a stranger, is it  
2 someone that you had -- you had not seen in Turbo town?

3 A. Correct.

4 Q. And the person that was carrying sheets, can you tell us of what ethnicity this  
5 person was?

6 A. That one didn't talk anything. He was busy carrying it.

7 PRESIDING JUDGE EBOE-OSUJI: Counsel, can you hold on. You may continue  
8 later.

9 Witness, when you say this person was a stranger to you, counsel had asked you was  
10 this somebody you had not seen in Turbo town and you said correct.

11 THE WITNESS: Correct. I have never seen that man before.

12 PRESIDING JUDGE EBOE-OSUJI: Is it possible that he might actually be from  
13 Turbo town but you had never met him before?

14 THE WITNESS: Maybe.

15 PRESIDING JUDGE EBOE-OSUJI: Can you also spell for the record Galsheets?  
16 You've used that expression a few times. Can you spell it? It may be a brand name  
17 for corrugated iron sheets, I don't know, but can you spell it so that the court  
18 reporters can write it correctly.

19 THE WITNESS: I think it is the name of the company which uses -- which makes  
20 sheets, so I think it is G-A-L-L-S-H-E-E-T (sic).

21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much for helping out.

22 MR GARCIA:

23 Q. Now, just an additional question: Did you know what was in these boxes that  
24 he was carrying, this Kalenjin person?

25 A. No.

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1 Q. Now, how old were they, these -- the two individuals that you saw, the one  
2 carrying the -- the sheets and the other one carrying the boxes, approximately?

3 A. Around 23, 24, 25, there.

4 Q. Now, Witness, after you observed these Kalenjin youths pass by with the -- with  
5 the goods, what did you do then? (Redacted)

6 (Redacted)

7 A. I went to (Redacted)

8 Q. I understand that's person number 12. And in what location does (Redacted)  
9 using your document before you? Sorry. Which place does (Redacted) Yes.

10 A. Location 8.

11 Q. Now, how did you -- how did you go there? Did you use a mode of  
12 transportation or did you simply walk?

13 A. It is walking distance.

14 Q. (Redacted) location number 8?

15 A. It's like 30 minutes or 20 minutes.

16 Q. Now, to get to location number 8, did you have to pass by another location?

17 A. Yes.

18 Q. Which one, using the document before you?

19 MR KIGEN-KATWA: With your permission, Mr President, in view of the existence  
20 of the PIS and in view of the witness' clear understanding of its use, may we suggest  
21 that we go to open session?

22 MR GARCIA: Your Honours, it's going to be a bit difficult because we're getting  
23 into a part of the witness's account which would identify her if she would speak  
24 about it in open session. It will be almost impossible to do it in open session. The  
25 witness will explain, I'll ask her the questions and explain it to the Court.

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1 PRESIDING JUDGE EBOE-OSUJI: Let's proceed with the substance of your  
2 testimony.

3 But how much longer do you -- are we going to remain in private session?

4 MR GARCIA: I'll have to use a certain amount of time for private session. I'm  
5 unable to give you a precise estimate. But there will be portions that I'll try and lead  
6 in public obviously for the benefit of the people that are here. I suspect that a good  
7 part of the remainder will have to be led in private because of the nature of the events  
8 that she will be explaining.

9 The Chamber will understand once she starts speaking about these events. They're  
10 events that it would be almost impossible to have done in public. We would have  
11 to -- it would be incomprehensible. So we have to. It's unfortunate, but we will  
12 need to proceed in private for -- for the most part for these events.

13 Now, the witness is before us, and I don't want to obviously explain to the Court  
14 exactly which events I'm speaking about, because the witness is testifying, but I'm  
15 sure that the Defence can see on the statement of the witness exactly where she's  
16 going.

17 PRESIDING JUDGE EBOE-OSUJI: Let's proceed.

18 MR GARCIA:

19 Q. Now, you said, Witness, that you had -- you had to pass by location number 5, if  
20 I understand correctly.

21 Do you remember -- before we get into that question, do you remember when you  
22 went to (Redacted) to the person -- person number 12's house, on what day that happened?

23 You were just speaking about the events on 1 January. In relation to those events,  
24 did they happen the same day, the next day? How many -- how many days later or  
25 was it the same day?

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1 A. I can't remember the exactly date, but in my statement I think I wrote it. I  
2 didn't disclose in the first statement, I didn't disclose the whole information, but later  
3 on I came to disclose the information that -- the reason was, it was because of my  
4 security I fear to disclose it. So actually if you see in my statement, there is two.

5 Q. Witness, just so we understand each other here, I'm going to basically ask you  
6 questions regarding what you would have observed on your way over to (Redacted) to  
7 person number 12's house. That's it for the moment.

8 A. Actually, I didn't observe, but I was told by (Redacted) PNU supporter (Redacted)  
9 (Redacted) in (Redacted)

10 MR GARCIA: All right. Your Honours, I see the time. I think it would be a good  
11 moment to take a break. And I'm still on track, and there's not much left of evidence  
12 that I intend to lead, so I still expect to be finished by 1 o'clock.

13 PRESIDING JUDGE EBOE-OSUJI: All right. We will take our morning break here  
14 and reconvene at 11.30. But the blinds will come down. Out of respect for the  
15 people in the public gallery, we should adjourn in public. Can we go into public  
16 session, please.

17 (Open session at 10.58 a.m.)

18 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: We will be adjourning for our morning break.  
20 We'll be reconvening at 11.30. The blinds will come down so that the witness is  
21 escorted from the courtroom.

22 (Closed session at 10.58 a.m.)

23 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

25 THE COURT OFFICER: All rise.

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1 (Recess taken at 11 a.m.)

2 (Upon resuming in open session at 11.39 a.m.)

3 THE COURT USHER: All rise.

4 Please be seated.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And, Witness, welcome  
6 back.

7 THE WITNESS: Okay.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we're in open session.

9 MR GARCIA: Your Honours, I'd ask that we go back into private session.

10 PRESIDING JUDGE EBOE-OSUJI: For how long now?

11 MR GARCIA: Fifteen minutes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: We go into private session for 15 minutes then.

13 (Private session at 11.39 a.m.)

14 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

15 MR GARCIA:

16 Q. Now, Witness, before -- before we took the break, you were speaking to us  
17 about how you had gone to location number 8 to visit person number 12 on your list.  
18 Now, I understand from your testimony that you, in order to get to location number 8  
19 you had to go -- or, that on that particular day, the day you visited person number 12,  
20 you went through location number 5; is that correct?

21 A. Correct.

22 Q. Did you also go through location number 6?

23 A. Correct.

24 Q. Now, Witness, I was asking you before as to if you could give us a time on -- on  
25 which you did go visit person number 12, and you said it was after 1 January 2008.

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1 Can you -- can you tell the Court exactly what was the atmosphere like in -- in  
2 location number 4, location number 5 and location number 6 at this time when you go  
3 through there to go to location number 8?

4 A. I didn't understand. You say location number 4.

5 Q. Yes.

6 A. Number 5.

7 Q. Yes.

8 A. And number 6.

9 Q. I'm sorry, I don't want to mix you up. What was the atmosphere like in  
10 locations number 5 and number 6 on the day that you were travelling to go to location  
11 number 8?

12 A. As I was passing I saw a group of people. They were gathered. Some was  
13 sitting down, some was standing. But I didn't hear what they were saying because  
14 I was passing by.

15 Q. Now, do you remember, Witness, where specifically these people were that you  
16 had seen on that day?

17 A. First, I saw it in location -- in the house of number 14 and then number 15.

18 Q. All right. We are going to get to that in a minute. I understand that when  
19 you met the investigators on one of the -- the first occasion -- actually, the second  
20 occasion, on (Redacted), you made a sketch for the investigators detailing certain  
21 places of relevance in location -- in respect to locations number 5 and number 6.

22 MR GARCIA: Unless there is any objection from the Defence, I'd like to have that  
23 shown to the witness on the screen. It's KEN-OTP-0109-0369. And it's tab 3A in  
24 the bundle.

25 MS ALAGENDRA: Your Honour, we have no difficulty with that.

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1 MR KIGEN-KATWA: None, your Honour.

2 MR GARCIA: Grateful. Is there a possibility of magnifying it just a bit in terms of  
3 width maybe? Thank you.

4 Q. Now, Witness, you see the sketch that's on the screen. It's a sketch that says at  
5 the top as a header "Annex A." It contains the date (Redacted)

6 Am I correct in saying that that's your -- your initials, your signature on the  
7 document?

8 A. Correct.

9 Q. And this is a document that you drew for the investigators when you met them;  
10 am I correct?

11 A. Correct.

12 Q. Now, when we look at this document, once again I'm going to place it with the  
13 junction pointing downwards, and we can see that (Redacted)

14 (Redacted)

15 (Redacted) Do you see that, Witness?

16 A. I'm seeing.

17 Q. And can you just tell us is this the -- (Redacted)

18 A. It is in location number 6.

19 Q. And I see an indication here, it says "meeting point." What is that exactly?

20 A. That is where I saw people they were gathering there. It's an open space, (Redacted)  
21 (Redacted)

22 Q. And just so we can have it for the record, this meeting point, the place where  
23 these people that you saw them meeting, (Redacted)

24 A. Correct.

25 MR GARCIA: I would ask, your Honour, that this sketch be introduced into



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1 evidence as a Prosecution exhibit.

2 PRESIDING JUDGE EBOE-OSUJI: Any objection?

3 MS ALAGENDRA: No objection, your Honour. But we repeat what we said  
4 earlier in relation to the other sketch.

5 MR KIGEN-KATWA: No objection.

6 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the next in the  
7 Prosecution exhibits.

8 THE COURT OFFICER: (Interpretation) Document KEN-OTP-009-0369, which is  
9 confidential, will have the number EVD-T-OTP-00100.

10 MR GARCIA:

11 Q. Now, Witness, the people that you saw gathered at this meeting -- at this  
12 meeting point, how much time did you observe them for when you were passing by  
13 there?

14 A. Can you repeat the question?

15 Q. I understand you were passing by location, the -- the meeting point (Redacted)  
16 (Redacted) and saw people gathered there. Did you -- were you just passing by  
17 and looked at them or did you stop and observe them? How did that go by?

18 A. I didn't stop, I was just passing.

19 Q. And just so we can understand the situation even -- even better, was it possible  
20 for -- for people to just walk around that place, location number 5, location number 6  
21 at this time?

22 A. Yes. They were free to walk.

23 Q. Was this applicable to people of all ethnicities?

24 A. Repeat your question.

25 Q. More direct: Could a person of Kikuyu ethnicity be walking through (Redacted)

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1 on the day that you walked through there to go to location number 8?

2 MS ALAGENDRA: Your Honour, perhaps before getting there my learned friend  
3 would like to establish whether or not there were any Kikuyus in the area at the time.

4 MR GARCIA: Your Honour, I don't understand. I understand if Defence counsel  
5 wants to object of a question of mine, they can do so, but to make comments during  
6 my --

7 PRESIDING JUDGE EBOE-OSUJI: I take that as an objection that the question lacks  
8 foundation to ask it, as in do we assume that Kikuyus necessarily had to be there.

9 MR GARCIA: The question is, your Honour, and this is a question that I put to the  
10 witness is, if to her understanding of what the atmosphere was at the time, if a person  
11 of Kikuyu ethnicity could walk through that area. The witness from her  
12 understanding of the context at the time can answer the question. And I don't see  
13 why it's necessary to precede that with the question that has been suggested by  
14 Defence counsel. (Redacted)

15 (Redacted)

16 Those are my submissions respectfully, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: But there is, as you can see, an implied answer in  
18 that sort of question that also makes it leading on a point that had not particularly  
19 been established for the witness. Why don't we just ask the witness that, if you  
20 really want the Kikuyu part.

21 MR GARCIA: If the -- I'm in the Court's hand, your Honour. If the Court wishes,  
22 I'll ask the question.

23 Q. Witness, from your recollection, at that time, the day that you were visiting  
24 location 8, were there anyone -- was there anyone of Kikuyu ethnicity in that area, in  
25 the area of number -- locations number 5 and location number 6?

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1 A. As I stated earlier, that the Kikuyus was escorted to police station. So there  
2 were no Kikuyu there.

3 Q. Now, Witness, I'll come back to the question that I had asked initially. Would  
4 it have been possible or what would have happened to a person of Kikuyu ethnicity  
5 who would have walked in that area to your understanding of the situation at the  
6 time?

7 MS ALAGENDRA: Your Honor, we --

8 MR GARCIA: I'm sorry, I haven't finished the question.

9 MS ALAGENDRA: We object to the question, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Let him finish his question and then you can  
11 object if you feel a need to at that time.

12 The question again, Mr Garcia.

13 MR GARCIA:

14 Q. Now, Witness, what would have happened, in your understanding of the  
15 situation, would it have been possible for someone of Kikuyu ethnicity to be walking  
16 in that area on that day, in the area of locations number 5 and 6 on that day when you  
17 were going to location number 8?

18 MS ALAGENDRA: Your Honour, we object to that question. It's speculative. The  
19 witness's previous answer makes it quite clear that this question is really not  
20 necessary.

21 PRESIDING JUDGE EBOE-OSUJI: The objection is sustained on the grounds of it  
22 calls for a speculative answer.

23 MR GARCIA:

24 Q. Now, Witness, when you're passing through locations number 5 and 6, you say  
25 you saw people gathered there. Were you able to determine how many -- could you

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1 tell us approximately how many people were there on that day gathered?

2 A. I can't remember exactly, but it was like approximately 50 to hundred.

3 Q. Now, could you tell us as well, if you can remember, what were the age groups  
4 of these people that were there, the 50 to 100 people?

5 A. I didn't say 100 people. I say just approximately.

6 Q. We understand that, Witness. But do you remember what age groups these  
7 people were, what age?

8 A. There were youth, there were elders, because as I was there, I was passing by, I  
9 managed to see youths and elders.

10 Q. Now, Witness, did you recognise anyone amongst these people that were  
11 gathered there on that day? And if you want to identify someone, you can use the  
12 list before you.

13 A. The people which I recognised is not on the list.

14 Q. Could you give us the name of the people -- the names of the people or name or  
15 names of the people that you recognised.

16 A. One was Tirop Tilawen.

17 Q. Who else?

18 A. Kimuringor.

19 Q. Can you spell that -- that second name for us Kimuringor, please?

20 A. K-I-M-U-R-I-N-G-O-R.

21 Q. Is there anyone else that you recognised on that day?

22 A. I don't remember, well, because it's -- those people are coming from that area, so  
23 (Redacted)

24 Q. Now, Witness, as for the person named Tirop Tilawen, this is a person of what  
25 ethnicity?

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1 A. Kalenjin.

2 Q. Can you tell the Court briefly who he was?

3 A. (Redacted)

4 Q. Was this the first time that you had seen this person, Mr Tirop Tilawen?

5 A. No.

6 Q. (Redacted)

7 A. (Redacted)

8 Q. Do you recall what political party Mr Tirop Tilawen supported at the time that  
9 you saw him?

10 A. ODM.

11 Q. And at the time how old was he?

12 A. I don't know.

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. I'm asking, Witness, if this person, Tilawen Tirop, had any position or function  
17 (Redacted)

18 A. At that time, no. He was just an elder.

19 Q. And afterwards?

20 A. What I know about him exactly is he was an elder, a village elder, that is all.

21 Q. And just so it can be clear for me and for the Court, when you say "village elder",  
22 is this someone who's just an older person or someone who had certain authority in  
23 the village?

24 A. He didn't have any authority.

25 Q. Thank you for that clarification. Now, you've mentioned as well a person

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1 named Kimuringor. Now, was this a person of what ethnicity?

2 A. Kalenjin.

3 Q. And where was this person from?

4 A. From (Redacted)

5 Q. And do you remember what political party this person supported at the time?

6 A. ODM.

7 MS ALAGENDRA: Your Honour, I believe these are matters which can be led in  
8 public.

9 MR GARCIA: Your Honour, I might have to go back into private immediately, so  
10 I'm in the Court's hands. If the Court wants to go in, we can of course do it. It will  
11 be a little bit more complicated, we'll not be able to get through it so efficiently.

12 It's -- the problem is that when the witness starts describing the functions of the  
13 person, then obviously we might have an incident where the witness unknowingly  
14 identifies herself. It could happen, so I'm being extra cautious in this case.

15 PRESIDING JUDGE EBOE-OSUJI: Let's go into public session.

16 (Open session at 12.02 p.m.)

17 THE COURT OFFICER: (Interpretation) We're in public session, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: We're in public session, Witness. Take care to  
19 not put identifying information in your answer and Prosecution counsel will also be  
20 careful and be on the watch-out for the risk of that happening.

21 MR GARCIA:

22 Q. Now, you've identified, Witness, two people that you knew that were there at  
23 this gathering. Now, as for the rest of them, you mentioned that there were youths,  
24 elders, without knowing specifically who they were amongst the elders, did any of  
25 these elders carry any -- have any functions or positions within the community?

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1 A. No. It's just only elders.

2 Q. Now, Witness, would you be able to tell us when -- how much time this meeting  
3 lasted?

4 A. I don't know because I told -- I told -- I think I made clear that I was passing by,  
5 so I didn't stop actually to see --

6 PRESIDING JUDGE EBOE-OSUJI: All right, that's enough.

7 MR GARCIA: I thought -- I'm sorry, your Honour, I thought we were going into  
8 private session, or --

9 PRESIDING JUDGE EBOE-OSUJI: You want to return to private session?

10 MR GARCIA: I'll ask a preliminary question, but I might have to go back into  
11 private session.

12 PRESIDING JUDGE EBOE-OSUJI: Keep going until you really necessarily must  
13 return to private session.

14 MR GARCIA:

15 Q. Now, Witness, apart from these two people that you've identified, do you  
16 remember anyone else that you would have known who was there at this -- at this  
17 gathering?

18 A. I cannot remember.

19 Q. Now -- now, Witness, when you --

20 I'm going to have to ask to go into private session, your Honour, ten minutes.

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 (Private session at 12.06 p.m.)

23 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

25 MR GARCIA:

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1 Q. Now, Witness, when you met the -- the OTP investigators (Redacted)  
2 (Redacted) do you recall having given them the details of the people that you  
3 remember who attended or who were there at this gathering?

4 A. Okay, I remember, but, as I am a human being, sometimes you forget.

5 PRESIDING JUDGE EBOE-OSUJI: We understand that, Witness, you are on the  
6 witness stand and taking all these questions, being asked to go here, there and  
7 everywhere in the story. If you don't remember, we understand that, just let us  
8 know. Don't feel that you are -- you are sitting an exam where you must remember  
9 everything immediately, that's not the point of it, but try as hard as you can to  
10 remember. When you don't remember, do let us know. And the lawyer will also  
11 try to find other ways to get to the point, or even refresh your memory if need be.

12 THE WITNESS: Thank you, Mr President.

13 MR GARCIA: Your Honour, I'm mindful of the time, and in light of the response  
14 given by the witness, obviously stating that she doesn't remember, I would like to  
15 refresh her memory with a paragraph from her statement where she indeed gave the  
16 detail of the people that who were present. It's very important information for the  
17 Prosecution. It's direct evidence on the matter.

18 PRESIDING JUDGE EBOE-OSUJI: Let's not editorialise it, just do what you need to  
19 do and then let the witness --

20 MR GARCIA: So with the Court's leave, I can either give the witness a copy -- a  
21 clean copy of her statement and direct her to the relevant paragraph.

22 PRESIDING JUDGE EBOE-OSUJI: That's the usual method, isn't it?

23 MR GARCIA: What I'd like to do is refresh the witness's memory, if possible, by  
24 having her read out the paragraph, the -- of the information that they gave -- she gave  
25 to the OTP at the time regarding this gathering and the people who participated in it.



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1 PRESIDING JUDGE EBOE-OSUJI: No, we'll do it as we did it the last time. The  
2 witness will be given the paragraph to look at it, review it silently, we give her time to  
3 do that, and you ascertain that she has indeed read it and then you ask her questions,  
4 but we're not going to read it directly onto the record.

5 MR GARCIA: Certainly, your Honour. That was not my intent, but indeed. If  
6 I could just get the help of the court officer to give the witness the statement. It's a  
7 clean copy obviously and it's opened at page -- and just for the record, it's  
8 KEN-OTP-0087-0315. The page is 0324 and the paragraph is 52.

9 Q. Now, Witness, I'd just ask you to read simply and only paragraph 52 on the  
10 page that's opened before you and when you have finished, I'll ask you some  
11 questions.

12 Witness, have you had a chance to read carefully paragraph 52 on that page?

13 A. Yes, I have read it.

14 Q. Now, Witness, after having read that paragraph, does it refresh your memory as  
15 to the people who you saw gathered there on that day?

16 A. Yes.

17 Q. Now, who else did you see there on that day at the meeting point?

18 A. Christopher Kisorio, Solomon Tirop.

19 Q. So Kisorio is correctly spelt.

20 Now, Witness, can you tell us who this Mr Christopher Kisorio is? First of all, what  
21 is his ethnicity?

22 A. He's a Kalenjin.

23 Q. And was this the first time that you had seen Mr Christopher Kisorio or had you  
24 seen him before?

25 A. I had seen him before.

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1 MR GARCIA: Your Honour, if the Court wishes, we can -- I think we can lead this  
2 in public.

3 MS ALAGENDRA: Your Honour, just one observation, this is a name which is  
4 appearing in the witness's statement and the correct method would have been -- it  
5 should have been included in the PIS. That would have saved us this process of  
6 memory refreshing because she was asked in the beginning "Can you look at the PIS  
7 if the names are there." So perhaps for future reference my learned friends can be a  
8 bit more vigilant about this.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, let's not make that sort of  
10 intervention. You can be helpful, but the thing about being more vigilant is not  
11 necessarily part of that. We welcome counsel to try and help to improve things, but  
12 the way it's done can also have the opposite effect.

13 Mr Garcia, we can proceed.

14 MR GARCIA: We can continue in public. I can ask some questions which I don't  
15 think are revealing of the identity of the witness.

16 PRESIDING JUDGE EBOE-OSUJI: We will then go into public session.

17 (Open session at 12.14 p.m.)

18 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

19 MR GARCIA:

20 Q. Now, Witness, can you tell us what age Mr Christopher Kisorio had -- was at  
21 that time? What age? How old was he at the time?

22 A. I don't know.

23 Q. The reason why --

24 A. But it -- but it was not a youth. It was elder.

25 Q. Thank you for that clarification, Witness. That's exactly what I wanted to ask

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1 you.

2 Now, this person, Mr Kisorio, can you tell us a little bit more about him? Who was  
3 he?

4 A. He was an elder and an ODM supporter.

5 Q. And can you tell us where he was an elder from, from what place?

6 A. He lives in (Redacted)

7 Q. And simply so it can be clear on the record, when you say "elder", is this a  
8 person who is simply older, or is it a person who had a certain position or authority  
9 within the community?

10 A. I mean older person.

11 Q. Now, when you say this person was an ODM supporter, can you give us more  
12 details on that?

13 A. Please, can you elaborate? I'm not understanding.

14 Q. Well, I'll be more specific, Witness: Who did he support exactly? What  
15 person?

16 A. He supported ODM, but -- and -- you mean candidates?

17 Q. Yes, indeed.

18 A. That was Honourable Ruto.

19 Q. And do you have any examples as to how he would have supported  
20 Mr Honourable -- Mr Ruto?

21 PRESIDING JUDGE EBOE-OSUJI: Before we do that, you can still ask the question  
22 later, but I want to clarify something with the witness.

23 Witness, in the -- in the course of your testimony, you had spoken about certain  
24 persons speaking to people in rallies, urging them to support the ODM, and you

25 specified that that included support for Mr Odinga, support for Mr Ruto running for

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1 parliament at the time and support for councillors.

2 Now, this person you've just mentioned and said supported Mr Ruto, was it only

3 Mr Ruto that this person was supporting within the ODM and the person was not

4 supporting, to your knowledge, either Mr Odinga or the local councillors candidate

5 for ODM?

6 THE WITNESS: They were supporting --

7 PRESIDING JUDGE EBOE-OSUJI: Who?

8 THE WITNESS: -- ODM candidates, councillors, MPs and the president, candidate

9 for presidential.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please proceed, Mr Garcia.

11 MR GARCIA:

12 Q. Now, Witness, my question was: You stated that he was supporting, amongst

13 others, Mr Ruto. Do you have any examples to give us, to provide us on how he

14 would have been supporting Mr Ruto?

15 A. I don't know, but what I knew it, it was ODM supporter like other people, but

16 later on I heard from someone that he was a mediator between Honourable Ruto --

17 MR GARCIA: One second. One second, Witness.

18 Your Honour, if we can briefly go into private session, please.

19 MS ALAGENDRA: Your Honour, perhaps the answer can be completed in public.

20 MR GARCIA: Actually, your Honour, there is a risk of -- I think we need to go into

21 private just briefly, and if -- if the Court so desires, we can go back into public

22 obviously and complete it.

23 PRESIDING JUDGE EBOE-OSUJI: We will go into private session, but at line 11 of

24 page 50, in the place that appears where the indication "(inaudible)" appears, the

25 witness had said MPs. She said councillors and MPs.

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1 MR GARCIA: I'm grateful, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: We will go into private session briefly.

3 (Private session at 12.20 p.m.)

4 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

5 MS ALAGENDRA: Your Honour, before that, in relation to the clarification your  
6 Honour just made from the transcript, I did hear madam witness also say ODM for  
7 president.

8 PRESIDING JUDGE EBOE-OSUJI: For president as well, you're correct.

9 MS ALAGENDRA: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 MR GARCIA:

12 Q. Witness, I want you to complete the phrase. Before I interrupted you, you said,  
13 "I don't know, but what I knew it was ODM supporter like other people, but later on I  
14 heard from someone that he was a mediator between Honourable Ruto" and you  
15 didn't complete. Can you please complete for us now?

16 A. Okay, I said by that time I didn't know what was actually, but later on I heard  
17 from someone saying that he was a mediator between Honourable Ruto and people at  
18 the ground.

19 Q. When you're saying "people at the ground", you're speaking about whom?

20 A. I'm speaking about ODM supporters, which were in the ground. Of course, all  
21 of them cannot talk to Honourable Ruto.

22 Q. And this person, Christopher Kisorio, would have been a mediator at what  
23 point -- what -- during what period between Ruto -- Mr Ruto and the people on the  
24 ground, the ODM supporters?

25 A. I don't know.

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- 1 Q. Witness, who told you about -- who provided you this information about  
2 Mr Christopher Kisorio being a mediator? You can use the list.
- 3 A. I heard from (Redacted)
- 4 Q. (Redacted)
- 5 A. (Redacted)
- 6 (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. And what else did (Redacted) tell you about this, about Mr Kisorio being  
10 a mediator?
- 11 A. I -- I don't remember if there was anything else.
- 12 Q. (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 (Redacted)
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 MS ALAGENDRA: (Redacted)
- 23 (Redacted)
- 24 MR GARCIA: (Redacted)
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

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1 MR GARCIA: This is an important issue, and it is a question of credibility, reliability  
2 of the witness on important facts. That's why I posed the questions, and the witness  
3 has given an answer, and I think we can understand her fears.

4 The Chamber might have to look at this, her evidence in this regard to evaluate why it  
5 is that in certain regards the witness has not given the full extent of what's found in  
6 her -- in her statement, and that's why I posed the question.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you were rising.

8 MS ALAGENDRA: I was wondering whether this is a discussion we can continue in  
9 the absence of the witness, your Honour?

10 And just one observation. The witness has had no problem, no difficulty testifying.

11 She's given the evidence. She's answered questions asked of her. Where she had

12 difficulty remembering, she was given a statement to refresh her memory. And

13 there is absolutely no signs of her testifying here feeling afraid at all. I think the

14 Court has been very careful in ensuring that she feels safe. And from what we see,

15 I think the witness is feeling quite comfortable sitting here. It is most unfair,

16 your Honour.

17 MR GARCIA: (Redacted)

18 (Redacted)

19 MS ALAGENDRA: Exactly.

20 MR GARCIA: That's why I asked the question. It is an important question to ask,

21 at least the Chamber is going to be having to evaluate the witness's testimony, the

22 Chamber must know what's going on in the witness's mind.

23 PRESIDING JUDGE EBOE-OSUJI: Are you impeaching your own witness?

24 MR GARCIA: Not at all, your Honour. I asked the question to simply understand.

25 PRESIDING JUDGE EBOE-OSUJI: There are ways of doing these things, Mr Garcia.

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1 You've had the witness's statement. In instances where the witness hadn't  
2 remembered what the witness told you in the statement, you've been allowed to  
3 refresh the witness's memory. That's the concern about the implication of that sort  
4 of submission.

5 MR GARCIA: Your Honour, in light of the witness's response, in light of her not  
6 remembering exactly the details, I'd ask to refresh the witness's memory in regards to  
7 this whole question of (Redacted) Mr Ruto acting as  
8 a mediator.

9 Pardon me. I'm sorry, I'm sorry about that. Mr Kisorio. I can ask further  
10 questions on that matter, but --

11 PRESIDING JUDGE EBOE-OSUJI: Let's be careful, Mr Garcia.

12 Did the witness say she didn't remember any more?

13 MR GARCIA: I can canvass that within a couple of minutes, your Honour, with  
14 your leave.

15 Q. Now, Witness, do you recall that when you did meet the OTP on (Redacted)  
16 (Redacted)

17 in regards to Mr Kisorio acting, as you would say, as a mediator? Do you remember  
18 that?

19 A. Yes, I remember.

20 Q. Now, today do you remember the full extent of (Redacted)  
21 (Redacted)

22 A. (Redacted) he was a mediator between Honourable Ruto and  
23 the people on the ground, I mean youths.

24 Q. I understand. You -- you've said that already. And I asked you the question  
25 to obtain even more details on this of when, at what time period did Mr Kisorio act as



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1 a mediator? Do you remember that answer today or do you not?

2 A. I think it was that time for campaigning.

3 Q. Now, do you remember any other details that (Redacted) would  
4 have told you in regards to how Mr Kisorio acted as a mediator? Or do you not  
5 remember that today?

6 A. I don't remember that today.

7 MR GARCIA: Now, your Honour, given the witness's response, I'd like to refresh  
8 the witness's memory with an excerpt, a paragraph from the document  
9 KEN-OTP-0109-3060 at 0366, paragraph 25.

10 THE COURT OFFICER: (Interpretation) Mr Garcia, please, could you repeat the  
11 page number?

12 MR GARCIA: Certainly. It is page 0366, and it finishes at page 0367, it is  
13 paragraph 25.

14 PRESIDING JUDGE EBOE-OSUJI: Is there any objection?

15 MS ALAGENDRA: Your Honour, if I can just say one thing? The witness has been  
16 testifying about Kisorio being a mediator during the campaigns. This paragraph  
17 that she's been referred to, in my respectful submission, your Honour, is on a very  
18 different issue.

19 PRESIDING JUDGE EBOE-OSUJI: But that will be something of cross-examination,  
20 isn't it?

21 MS ALAGENDRA: Your Honour, what it seems like is that memory refreshing is  
22 being used to elicit evidence other than what the witness has provided saying that she  
23 doesn't remember.

24 PRESIDING JUDGE EBOE-OSUJI: I think it is something that you can deal with in  
25 cross-examination or final submissions.

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1 Mr Kigen-Katwa.

2 MR KIGEN-KATWA: Your Honours, I've also looked at paragraph 25 that is being  
3 referred to, and it has no relationship with the question that is sought to have the  
4 witness remember.

5 And I think the particular concern that we would have on our part is that the  
6 opportunity and the window to refresh her memory, she's being used to assist her to  
7 narrate a different part of her testimony other than the specific issue over which her  
8 memory is being refreshed.

9 PRESIDING JUDGE EBOE-OSUJI: Any reaction? Any reply, Mr Garcia?

10 MR GARCIA: Yes. Your Honour, the witness -- the question that I asked was a  
11 very general question on the role of Mr Kisorio during any period of time as a  
12 mediator with Mr Ruto with -- acting for Mr Ruto. And the witness has explained  
13 that she doesn't remember the full extent of (Redacted)  
14 (Redacted)  
15 Now, we have here at paragraph 25 the full extent of (Redacted)  
16 (Redacted) the time period and exactly what the role was of Mr Christopher  
17 Kisorio. So it is exactly on point as to what the witness does not remember, (Redacted)  
18 (Redacted) and that's why the  
19 information is valuable.

20 PRESIDING JUDGE EBOE-OSUJI: The document may be given to the witness and  
21 let her review it in her own mind.

22 THE WITNESS: (Indiscernible), Mr Kisorio.

23 MR GARCIA:

24 Q. Witness, you have the document before you. I'd ask you to just simply look at  
25 paragraph 25, it's at the bottom of the page and it finishes on the next page. So just

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1 please read that paragraph to yourself and nothing else.

2 Witness, I'm sorry, have you had a chance to read the paragraph 25 to yourself

3 already? It starts on page 7 and continues on page 8, just two lines. Have you had

4 a chance to read that?

5 A. Yes.

6 Q. Now, Witness, does that refresh your memory (Redacted)

7 (Redacted) regarding Christopher Kisorio?

8 A. Yes, it was only that in the first statement I didn't indicate this. That is why

9 I was following what I said before.

10 Q. Now, can you tell us exactly how it's refreshed your memory? Can you tell us

11 what you know about Mr Christopher Kisorio's role as a mediator? (Redacted)

12 (Redacted)

13 A. (Redacted) Kisorio, Tirop,

14 and Solomon Tirop, Farouk Kibet was in charge, was receiving directions from

15 Honourable Ruto.

16 Q. And what would they do with these directions from Mr Ruto?

17 MS ALAGENDRA: Your Honour, first, we don't know what directions she's even

18 talking about before we go to what they were doing with it.

19 MR KHAN: Foundation.

20 MS ALAGENDRA: We need some foundation, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

22 MR GARCIA:

23 Q. Witness, what were the directions that were being given to these people, to

24 Mr Kisorio, Mr Tirop by Mr Ruto?

25 A. What I understand about -- (Redacted)-- asking them,

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1 "Where are they?" means where are they; "How far have you gone?" It means, like,  
2 they were asking about Kikuyus, "Where are they?" "How far have you gone?"

3 Q. Can you explain that a little bit more for us to understand. "How far have you  
4 gone?", in respect to Kikuyus, what -- what did that mean?

5 A. It's like he was asking -- I didn't say that I -- I saw it and I -- it's only I heard that  
6 Honourable Ruto would send a text to Solomon and ask "How far have you gone?",  
7 or "Where are they?" I mean, I think they were asking about Kikuyus, where are  
8 they exactly.

9 Q. And when was this -- when was he sending these texts to Solomon? What time  
10 period?

11 A. I don't know. What I'm saying is I just heard from (Redacted) So as we  
12 are talking.

13 Q. And these directions were being passed on to who, or what were they doing  
14 with these directions from Mr Ruto?

15 A. Repeat the question.

16 Q. You said that Mr Ruto was giving directions through these people, what would  
17 they do with these directions, these people, Mr Kisorio, Mr Solomon Tirop?

18 A. I assume they were telling youths what they're supposed to do, or what they  
19 can -- they can do.

20 Q. (Redacted)

21 (Redacted)

22 (Redacted) I'd ask you not to look at your -- maybe we can just remove the -- the  
23 statement from the witness.

24 MS ALAGENDRA: Also, can we have a transcript reference for that testimony,  
25 please?

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1 MR GARCIA: I recall, your Honour, that it was said this morning. I don't have the  
2 exact transcript reference.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, are we still on track for you  
4 completing by lunch-break because it's 16 minutes --

5 MR GARCIA: Unfortunately not, your Honour. I'll be -- I'll be needing 30  
6 additional meetings -- minutes right after the lunch period to finish.

7 PRESIDING JUDGE EBOE-OSUJI: We can proceed.

8 MR GARCIA:

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. And just for Defence counsel, the reference of this morning, it's on page 11, and  
14 lines 18 to 24 where the answer is, (Redacted)

15 (Redacted) That's the exact reference. Thank you. I'm  
16 grateful to my colleagues.

17 MS ALAGENDRA: Sorry, firstly, it wasn't yesterday, it was today. And, secondly,  
18 the question was asked "Who participated in the attack?" The word "attack" didn't  
19 come from the witness.

20 MR GARCIA: Your Honour, the -- the question was done in the context of speaking  
21 about that attack on Turbo town.

22 PRESIDING JUDGE EBOE-OSUJI: Those things we can deal with in submissions at  
23 the right time.

24 You can proceed, Mr Garcia.

25 MR GARCIA:

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- 1 Q. Now, Witness, (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 Q. (Redacted)
- 5 A. It was January 2008.
- 6 Q. Now, Witness, I understand that you -- I'm just going to change subject.
- 7 I understand that you obviously went to location number 8 to meet person -- one
- 8 second, Witness. Before I do -- I do move on, you mentioned the additional
- 9 names -- I -- actually, I just wanted to follow up on one question. (Redacted)
- 10 (Redacted) Did you ever come to find out who person number 2
- 11 reported to?
- 12 A. I heard he was reporting to Honourable Ruto.
- 13 Q. Was it just honourable -- Mr Ruto, or anyone else?
- 14 A. I don't know if there was others, but what I --
- 15 Q. Thank you for those clarifications, Witness.
- 16 Now, once again, I'm going to just bring you back chronologically. You said you
- 17 were at location number 8 to see person number 12. (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 Q. And I'll be more specific, Witness. Yes -- I think it was yesterday, transcript
- 21 118, page 101, line 22, for the benefit of Defence counsel, you mentioned PNU -- you
- 22 mentioned that PNU supporters were punished during that time period. Can you
- 23 give us more information in that -- on that -- on that issue?
- 24 A. Elaborate it. I'm not understanding you.
- 25 Q. Yes. Yesterday, during your testimony, you said that PNU supporters were

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1 punished for not supporting the ODM; do you recall that?

2 A. Okay. Okay. Okay.

3 PRESIDING JUDGE EBOE-OSUJI: Did she say "punished"?

4 MS ALAGENDRA: Again, your Honour, I'd like a transcript reference because we  
5 don't recall that.

6 PRESIDING JUDGE EBOE-OSUJI: Or "treated like outcasts"? I --

7 MR GARCIA: I -- I can go directly to the transcript. I verified it. Just a minute --

8 PRESIDING JUDGE EBOE-OSUJI: You should.

9 MR GARCIA: -- if my colleague can send it to me and --

10 PRESIDING JUDGE EBOE-OSUJI: I distinctly remember "outcasts" but I may have  
11 forgotten hearing the word "punished".

12 MR GARCIA: Okay, so it's page 101 of yesterday's transcript, transcript 118, line 15:  
13 "Yes, before, but since I was born, I haven't seen anyone who has been punished  
14 because of that, but before, I understand there was. That is why (Redacted)  
15 because I knew it was something.

16 But after this, the conversation, I had to come now to understand that, okay, this thing  
17 was before in my culture and I think now they are exercising it because -- because  
18 the -- because actually later on they came to -- to punish those people who was in  
19 PNU, to give out cows"... "for attending -- for for not supporting the ODM."

20 Q. Witness, I've just read out what you stated during your testimony yesterday.

21 Can you elaborate on that? Can you give us information as to what -- what people  
22 from the PNU were punished? Can you give us names?

23 A. (Redacted)

24 and others.

25 MR GARCIA: Now, just for the benefit of interpreters, if need be, (Redacted)

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1 (Redacted)

2 (Redacted) So those -- the names are

3 there.

4 Q. Now, Witness, how did you come to learn that these people had been punished?

5 A. (Redacted) they took a cow (Redacted)

6 (Redacted) to feed Kalenjin warriors.

7 Q. So just page 63, line 6, is to feed Kalenjin warriors. And just for the record,

8 (Redacted) is a person of what ethnicity?

9 A. Kalenjin.

10 Q. And just so it can be clear on the record as well, who did he support, what

11 political party during the elections of 2007, (Redacted)

12 A. PNU.

13 Q. Now, as for these -- the -- the other people that you mentioned, (Redacted)

14 do you remember -- do you have any information to provide us as to what happened

15 to him because of the fact that he was a PNU supporter?

16 A. I heard that he gave out a sheep.

17 Q. And what about number 22, (Redacted)

18 A. He gave out a cow.

19 Q. And number -- person number 23, what happened to him?

20 A. He give out also a cow. That is what I heard.

21 Q. Now, just so we can have the -- we can be clear on this matter, did they give out

22 these cows or sheep voluntarily? How -- how did that work?

23 A. No, what I heard was that the youth were going to -- because they knew these

24 were PNU supporters, they -- they went to the houses, to the houses for these people

25 and they collected.



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1 Q. From your understanding, could you refuse to give sheep or cow when the  
2 youth came and asked for them?

3 A. They didn't refuse, of course, they gave out because it was like between life and  
4 death.

5 Q. Now, you said the youth would go to their house. There were youth -- could  
6 you be more precise, the youth were of what ethnicity?

7 A. Kalenjin.

8 Q. And do you know, Witness, who was directing these Kalenjin youth to go  
9 around from house to house of Kalenjin PNU supporters to collect --

10 A. No, I don't know.

11 Q. And before I move on to another subject, Witness, when you -- you stated in  
12 your testimony that the burning of houses in Turbo town lasted -- you said  
13 approximately five days. Did you, yourself, ever --

14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, sorry, can you hold on, please.

15 I want to, so that this, the last stream of testimony on the record, is clear.

16 Witness, I mean, you had earlier, I remember this line now, started with (Redacted)  
17 (Redacted) and then it was in the context of that that you said you -- there had not  
18 been any punishment that you were aware of until after the -- that election when  
19 some PNU supporters were punished, and you've now explained to us what that  
20 punishment was; is that it?

21 THE WITNESS: Correct. (Redacted)

22 they were punished.

23 PRESIDING JUDGE EBOE-OSUJI: So the punishment was not then (Redacted)

24 (Redacted) it was -- or, was it in the nature of that, (Redacted) PNU supporters for  
25 not following the adopted position, or was it --

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- 1 THE WITNESS: No, it was not (Redacted)
- 2 PRESIDING JUDGE EBOE-OSUJI: It was not (Redacted) PNU supporters? So what
- 3 happened then was --
- 4 THE WITNESS: It was like --
- 5 PRESIDING JUDGE EBOE-OSUJI: What you've just described, some people had
- 6 to --
- 7 THE WITNESS: Give out the animals.
- 8 PRESIDING JUDGE EBOE-OSUJI: Cows --
- 9 THE WITNESS: Yes, or sheep.
- 10 PRESIDING JUDGE EBOE-OSUJI: -- or sheep.
- 11 THE WITNESS: Yeah.
- 12 PRESIDING JUDGE EBOE-OSUJI: And so on and so forth?
- 13 THE WITNESS: Yeah.
- 14 PRESIDING JUDGE EBOE-OSUJI: Right. I want to be clear on my understanding
- 15 of why, in your view, that had to be so. Think now about ODM and PNU. Why
- 16 was it, according to your understanding, that people afterwards had to give out sheep
- 17 and cows for supporting PNU?
- 18 THE WITNESS: The PNU supporters was giving out cows to say sorry for not going
- 19 the same direction with the community.
- 20 PRESIDING JUDGE EBOE-OSUJI: And according to your understanding, what was
- 21 the direction of the community?
- 22 THE WITNESS: The direction of community was supporting ODM.
- 23 PRESIDING JUDGE EBOE-OSUJI: Are you able to tell us how that decision might
- 24 have been taken and also communicated to everyone?
- 25 THE WITNESS: Say it again. I didn't get it. Repeat it, please.

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1 PRESIDING JUDGE EBOE-OSUJI: Do you know how the decision of the  
2 community that you said was the decision of the community to support ODM, are  
3 you able to explain how it was that that kind of decision was taken and also toward  
4 everybody, the circumstances of it?

5 THE WITNESS: I cannot explain, but what I know exactly is most of the Kalenjin  
6 were supporting ODM. So few were supporting PNU.

7 PRESIDING JUDGE EBOE-OSUJI: Do you know whether everybody in the  
8 community was told everyone must support ODM?

9 THE WITNESS: For myself I didn't hear.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Mr Garcia, it's 1 o'clock.

12 MR GARCIA: Indeed, your Honour. I see that we -- we need to take the break,  
13 obviously. I just had one last question before the break, but I -- I think we might be  
14 passing -- it will take maybe a couple of minutes.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MR GARCIA: It's just on the -- on the heels of what the -- of the questions that have  
17 been asked by you.

18 PRESIDING JUDGE EBOE-OSUJI: And we can -- you said you have another 30  
19 minutes. So you're still within that?

20 MR GARCIA: Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: We will go into public session and adjourn in  
22 public session.

23 (Open session at 1.01 p.m.)

24 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Before we adjourn, Mr Garcia, I'd like you to take

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1 and look at Article 67(1)(e) of the Statute. The first part of it, the right "To examine,  
2 or have examined, the witnesses against him or her...", it's right here, that's said to be  
3 a right that belongs to an accused person.

4 At some point -- you don't need to deal with that now, at some point in this case, in  
5 light of the hearsay testimony we've heard, it is something on which the Chamber will  
6 require careful research and submissions upon. Whether -- it's one thing, of course,  
7 to receive hearsay on matters of community folk-law or background information, but  
8 when hearsay starts cutting close to suggestions of criminal responsibility, we would  
9 like to have that matter addressed, how we get around Article 67(1)(e) at some point.

10 MR GARCIA: Thank you, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: We'll adjourn now. The blinds will come down  
12 so that the witness can be escorted from the courtroom.

13 (Closed session at 1.03 p.m.)

14 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.

18 THE COURT OFFICER: All rise.

19 (Recess taken at 1.04 p.m.)

20 (Upon resuming in open session at 2.34 p.m.)

21 THE COURT USHER: All rise.

22 Please be seated.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

24 Witness, welcome back.

25 We are in open session, Mr Garcia.

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1 MR GARCIA: If we could go into private session for three, four minutes your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Private session.

3 (Private session at 2.37 p.m.)

4 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

6 MR GARCIA:

7 Q. Good afternoon, Witness.

8 A. Good afternoon.

9 Q. Now, Witness, yesterday during your testimony, you explained to the Court that it was

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 MS ALAGENDRA: Your Honour, perhaps before madam continues my learned friend

20 could assist us by directing us to whether or not these are matters which have been disclosed

21 to the Defence.

22 MR GARCIA: Your Honour, the Defence counsel knows fully well that this is a question

23 that I've asked the witness following up questions from the Chamber. And obviously this

24 aspect I have no idea what the witness is going say, so it's a bit premature, but it's

25 spontaneous on behalf of the witness explaining what exactly happened (Redacted)

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1 (Redacted) So I don't see how, if this information is coming out, I don't know what the  
2 witness is going to say, but if indeed the witness says something that she's never canvassed  
3 before, it's spontaneous and we're in the same position as the Defence.

4 MS ALAGENDRA: Your Honour, the Prosecution have interviewed this witness many  
5 times, and from the statements it's clear (Redacted) And if they didn't find  
6 it prudent to ask during those many, many, many interviews why, we don't see why it's being  
7 done here to follow up on a question from the Chamber.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, is it your position that you did not have this  
9 information? This is the first time you're hearing it from this witness, (Redacted)

10 (Redacted)

11 (Redacted)

12 MR GARCIA: Your Honour, I haven't seen that in the -- in the two statements, the two main  
13 statements of the witness in regards to what happened during the post-election violence.  
14 The closest that we've gotten to that type of information is during the clarification session, I  
15 think there might have been something in that regard, but I'd have to -- I'd have to verify it.  
16 But I've not heard yet what the explanation is and what the additional information the  
17 witness is going to give.

18 PRESIDING JUDGE EBOE-OSUJI: No. The point I was making was this: Is it your  
19 position that all this is new to you, (Redacted)

20 (Redacted) If you're telling us that that is -- this is news to you, it came are out for the first time with  
21 the witness is on the stand, then that addresses your -- your response about spontaneity. But  
22 Ms Alagenda is saying her position, as I understand it, is that if this is information you had  
23 already, you should have disclosed it and you haven't.

24 MR GARCIA: Well, your Honours, I can -- I can address that. This information is new to  
25 me. I've asked my colleagues as well. We don't see that within the statements that the

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1 witness has given to us. So it's completely spontaneous.

2 PRESIDING JUDGE EBOE-OSUJI: Did it come out -- did it come about in the course of  
3 discussions with the witness in preparation?

4 MR GARCIA: No. Not this information, no.

5 MS ALAGENDRA: Your Honour, if I can perhaps just explain what my objection was, is  
6 from all the statements, your Honour, (Redacted)

7 (Redacted) And this is a matter which the

8 Prosecution probably should have clarified during the several interviews, and if not, during  
9 proofing, because it was quite obvious that she wasn't. So for them to come here and then

10 decide to follow up on information which they knew all along since 2012, that, your Honour,  
11 we think is inappropriate and it denies us the notice that we would have needed to now check  
12 the information in order to cross-examine on those issues if we wanted to.

13 PRESIDING JUDGE EBOE-OSUJI: I understood that part of it, but not all of it can come in  
14 though, because we're in the process of -- there may be a lot that someone might say, well,

15 you ought to have done this, this or the other way, but the person doing whatever it was

16 might have an eye on something else. It becomes a criticism of prudence, and that's not the  
17 same thing as failing to disclose information somebody had. So that's the point. So the

18 matter of prudence you can make your submissions on the merits when the time comes. My  
19 interest now is in whether or not there is a disclosure issue that wasn't made. If that's not the

20 case, then we can move on.

21 Mr Garcia, proceed.

22 MR GARCIA:

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 Q. And, Witness, when you say that they had a meeting, who is "they"?

3 A. Kalenjin youth.

4 Q. Anybody else apart from the Kalenjin youth?

5 A. According to my understanding, it was like those people that were -- of course, Kalenjin  
6 youth cannot decide without elders. What I understand is elders are supposed to give  
7 direction what to do, what not to do.

8 Q. And when would this -- when would this have occurred? When would they have met?

9 A. I don't know.

10 Q. (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. Thank you for those clarifications, Witness.

17 MR GARCIA: Your Honours, we can go into public.

18 PRESIDING JUDGE EBOE-OSUJI: We'll go to public session.

19 (Open session at 2.47 p.m.)

20 THE COURT OFFICER: (Interpretation) We're in public session, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

22 Mr Garcia.

23 MR GARCIA:

24 Q. Now, witness, you've stated that the burning in Turbo town continued for five days.

25 I'd like to ask you questions regarding Turbo town centre, the centre of Turbo town. Were



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1 there houses that were burnt there as well, houses or shops?

2 A. It was houses and shops also.

3 Q. And can you tell the Court these shops and houses in the Turbo town centre, who did  
4 they belong to? What ethnic group?

5 MS ALAGENDRA: Maybe what ethnic groups as in plural.

6 THE WITNESS: Kikuyus.

7 MR GARCIA:

8 Q. What was the state of these shops and houses in Turbo town centre that belonged to  
9 Kikuyus after the elections?

10 A. Repeat the question.

11 Q. What was the state, the condition of these houses or shops that belonged to Kikuyus in  
12 the Turbo town centre after the elections?

13 A. After the election, everywhere was destructed.

14 Q. Now, Witness, did you see -- did you ever see police forces on the ground during those  
15 five days that you said that there was burning in Turbo town?

16 A. Yes. I saw general service unit.

17 MR GARCIA: Can we go into private session for five minutes, your Honour?

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 (Private session at 2.50 p.m.)

20 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

21 MR GARCIA:

22 Q. Now, Witness, can you explain to us in what context you saw the GSU forces?

23 A. I saw a lorry coming from Uganda Road towards Eldoret town. As they reach Kobil  
24 petrol station, they turned the lorry to come near the river and it is near -- the name is not here.

25 (Redacted)

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1 Q. That's all right. Please continue. (Redacted) What happened?

2 A. (Redacted). So they came

3 near there and then parked the lorry there.

4 And the youth were coming towards Turbo town from that side of number 8. So I

5 knew (Redacted) was there and number 18.

6 Q. Just to be clear, (Redacted) number 18 were part of the Kalenjin youth that were

7 there?

8 A. Yes.

9 Q. How were they dressed?

10 A. They didn't have shirts on the top. They were wearing shorts and they were

11 having -- I don't know how to say that.

12 Q. I see you've made a gesture across your shoulder?

13 A. Yeah.

14 Q. Is it -- if I may lead -- is it a quiver, something to hold --

15 MS ALAGENDRA: No, your Honour, he may not lead.

16 MR GARCIA:

17 Q. Actually, Witness, if you can --

18 PRESIDING JUDGE EBOE-OSUJI: Don't lead. You can try your best to get to it without

19 that.

20 MR GARCIA:

21 Q. Witness, can you just describe exactly what they had. I know you made the motion

22 across the front of your shoulder. What was this that you're trying to describe?

23 A. In my -- in my -- in my language, I know what it is, but I don't know how to put it.

24 Q. And what is it for?

25 A. Normally warriors were having that when they are going to fight.

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1 Q. What --

2 PRESIDING JUDGE EBOE-OSUJI: Can you -- you said in your language you know how to  
3 say it. Do you know what it is in Swahili?

4 THE WITNESS: I don't know.

5 PRESIDING JUDGE EBOE-OSUJI: Okay. In your language, can you say what it is? Let's  
6 see if we can at least note it down.

7 THE WITNESS: It is called motiet.

8 PRESIDING JUDGE EBOE-OSUJI: Did you say motiet?

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: How would you spell that?

11 THE WITNESS: M-O-T-I-E-T.

12 PRESIDING JUDGE EBOE-OSUJI: Counsel, you may proceed.

13 MR GARCIA:

14 Q. Witness, what purpose does it serve, this motiet?

15 A. It's a kind of bag which they normally put arrows on it.

16 Q. Now, on that day when you observed (Redacted) number 18 -- now, I'm speaking about  
17 (Redacted) were you able -- can you describe exactly what else -- what other dress wear he had  
18 on?

19 A. They are wearing shorts.

20 Q. Now, were -- were you able -- were you able to see, did he have a shirt on or something  
21 of that nature?

22 A. They didn't have shirts, but they were -- put the -- the faces whitewash.

23 Q. All right. You say they put the faces whitewash. What is that exactly? What was on  
24 their faces?

25 A. It was like there was some mud. They put it in their faces so that you cannot recognise

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1 them.

2 Q. Now, I see that with your hand you're indicating as well. Is it just on the face that they  
3 had this mud?

4 A. No. The faces and the chest.

5 Q. And what happened with the GSU?

6 A. (Redacted)

7 Q. (Redacted)

8 A. (Redacted)

9 Q. Now, Witness, I'm going to change --

10 PRESIDING JUDGE EBOE-OSUJI: Who are "they"?

11 THE WITNESS: Kalenjin warriors.

12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

13 THE WITNESS: (Redacted)

14 (Redacted)

15 MR GARCIA:

16 Q. Now, Witness, I'm going to change subject. You mentioned during your testimony that  
17 there -- this issue of cooking for Kalenjin warriors in (Redacted) on your list.

18 What can you tell us about that?

19 A. I stated before that I was in proceeding to number 12 home. Before that, I went to a  
20 (Redacted) he informed me that there

21 was -- they were -- they were cooking -- they were cooking warriors (Redacted)

22 (Redacted)

23 Q. All right. Let's just -- let's just clarify that, because as it stands on the record, it

24 says -- and I'm sure this is not what you meant -- "They were cooking -- they were cooking

25 warriors (Redacted) Can you just clarify that, please? They were cooking -- they

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1 were cooking?

2 A. I mean it was a cooking place.

3 Q. And it was a cooking place for who?

4 A. Cooking place for warriors.

5 Q. And warriors of what ethnicity?

6 A. Kalenjin.

7 Q. (Redacted) When did this person  
8 tell you this?

9 A. It is the name -- the name for the person which I am -- I was talking to who was -- the  
10 name was the same as (Redacted)

11 Q. And can you tell us the -- the date when she told you this?

12 A. I can't remember the date.

13 Q. What month was this?

14 A. It was January 2008.

15 Q. Now, did anything happen with this cooking?

16 MS ALAGENDRA: Your Honour, before we go further, the witness is saying it's not (Redacted)  
17 It's somebody with the same name. Is that -- is that what is being said?

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you need to clear that up with the witness.

19 MR GARCIA:

20 Q. Witness, can you tell us the name of the person who told you about this, about the  
21 cooking?

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. No.

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 MR GARCIA: (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 16 MS ALAGENDRA: (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, you know, you -- I think you may want to
- 19 let Mr Garcia do his examination-in-chief, whether or not he gets it right. During your own
- 20 cross-examination you can explore these other things, but let him do his examination-in-chief.
- 21 MR GARCIA:
- 22 Q. (Redacted)
- 23 (Redacted)
- 24 A. (Redacted)
- 25 (Redacted)

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- 1 (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 (Redacted)
- 6 Q. (Redacted)
- 7 MS ALAGENDRA: (Redacted)
- 8 MR GARCIA: (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 MS ALAGENDRA: (Redacted)
- 12 (Redacted)
- 13 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 14 MR GARCIA: (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 20 (Redacted)
- 21 MR GARCIA: (Redacted)
- 22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 23 MR GARCIA:
- 24 Q. (Redacted)
- 25 (Redacted)

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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 A. (Redacted)



Trial Hearing  
Witness: KEN-OTP-P-0613

(Private Session)

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 (Redacted)
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 (Redacted)
- 20 MR KHAN: (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 MR GARCIA: (Redacted)
- 24 Q. (Redacted)
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0613

(Private Session)

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- 1 (Redacted)
- 2 MR KHAN: (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 MR GARCIA:
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 Q. (Redacted)
- 20 (Redacted)
- 21 A. (Redacted)
- 22 (Redacted)
- 23 Q. Now, you've mentioned Mr Henry Too. Can you tell us what ethnicity this person is?
- 24 A. Kalenjin.
- 25 Q. Can you also tell us what political party he supported at the time, if you know?

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1 A. ODM.

2 Q. You mentioned as well Arap Cheplel. What ethnicity was this person?

3 A. Kalenjin.

4 Q. And, once again, do you know what political party he supported at the time?

5 A. ODM.

6 Q. Now, if it could just be shown to the witness Prosecution Exhibit EVD-T-OTP-00100.

7 Can we magnify it once more as was done before the break?

8 Now, Witness, I'd like you to just take a look at the screen before you. Once again we're back

9 to the sketch that you drew for the OTP. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. (Redacted)

14 A. (Redacted)

15 Q. (Redacted)-- you've indicated a place "Kisorio's

16 farm". Just to be clear, whose farm is that? What's the full name of the person?

17 A. It is Christopher Kisorio's farm.

18 Q. You've also indicated "Solomon Tirop farm". Is that Solomon Tirop's farm as well?

19 A. Yes.

20 MR GARCIA: And over on the -- sorry, over on the other, opposite, side there is an

21 indication for "Major Cheruiyot farm". Do you see that?

22 A. Correct.

23 Q. Who is that?

24 A. He was an officer in the armed forces.

25 Q. Can you tell us of what ethnicity he was?

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1 A. Kalenjin.

2 Q. (Redacted)

3 (Redacted)

4 A. (Redacted)

5 Q. (Redacted)

6 A. (Redacted)

7 (Redacted)

8 Q. Thank you, Witness.

9 If I may, I'd like to have shown witness a document, 0080-1215. It's tab 4A of the bundle.

10 Now, Witness, I'd like you to look at the screen before you. There is a photo. Can you

11 identify what's depicted in this photo on the screen?

12 We can do this in public session.

13 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.

14 (Open session at 3.20 p.m.)

15 THE COURT OFFICER: (Interpretation) We're in public session, Mr President.

16 Mr Garcia, please, kindly confirm that this is a public document.

17 MR GARCIA: It will be public.

18 Q. Now, Witness, can you identify what's depicted in this photo on your screen?

19 A. It is in Turbo town, a place called Garage.

20 Q. And what was this place called Garage? Was it a residential or a commercial place?

21 A. It was a commercial -- commercial place.

22 Q. Now, you see the photo before you. Can -- can you tell us whether -- whether before

23 the elections this -- this place Garage was in the state that you see before you on the screen, on

24 the photo?

25 A. It was not like this before.

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1 Q. How was it before, before the elections?

2 A. It was not destroyed like this.

3 Q. Now, can you tell us by looking at this photo approximately when you think that this  
4 photo would have been taken?

5 A. I think after presidential announcement.

6 Q. If you could tell us just the month and the year.

7 A. It is 2008, January there.

8 Q. Now, you're mentioning January 2008. Is there a reason why, in your opinion, it  
9 wouldn't have been February or March or another month afterwards?

10 MS ALAGENDRA: Your Honour, perhaps before the witness answers that question, to  
11 make it easier for her, we don't dispute that the photographs that are going to be shown were  
12 burnings that took place during the PEV period. So either my friend leads it or they can just  
13 be exhibited.

14 MR GARCIA: Is there -- if there's a same admission from Mr Kigen-Katwa's side of Defence?

15 MR KIGEN-KATWA: No, it's Kigen. We -- we have no objection, Mr President.

16 MR GARCIA: So then, your Honours, I just need to establish, unless there's going to be an  
17 admission in that regard as well, that most of these places or some of them were Kikuyu  
18 owned before the post-election violence. I can do that quite efficiently and fast in light of the  
19 admission that's been made.

20 PRESIDING JUDGE EBOE-OSUJI: Why don't we start one thing at a time. Do you want to  
21 then tender this document, or are you saying you will not tender it unless there is an  
22 admission that it is a Kikuyu place?

23 MR GARCIA: Your Honour, what I'd propose to do is just ask the additional question of  
24 whether if it was Kikuyu-owned place or not, and maybe for efficiency sake I could just go  
25 through the photos, the witness can give us her answers and then I can tender them in one

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1 batch, if you will, not under the same number, but different numbers obviously.

2 PRESIDING JUDGE EBOE-OSUJI: No. Let's do it one at a time. Do you want to tender  
3 this photo now and ask questions about it or not?

4 MR GARCIA: Yes, your Honour. We can tender -- I'd ask for it to be tendered right now, I  
5 just have one additional question afterwards on this photo.

6 PRESIDING JUDGE EBOE-OSUJI: The document will be marked as the next in the  
7 Prosecution exhibits.

8 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1215, public, will be  
9 given the number EVD-T-OTP-00101.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, that was a picture of some ruins. Are there  
11 other pictures of the same ruins from different angles you want to tender? I see that there  
12 are other pictures in the bundle.

13 MR GARCIA: Yes, your Honour, there are other pictures that I'd like to tender as well.

14 PRESIDING JUDGE EBOE-OSUJI: And would the question you want to ask relate to all of  
15 them together or just questions that are particular to particular photos?

16 MR GARCIA: There are some questions that will be general questions applicable to certain  
17 ones. I'm just looking right now. Yes, unfortunately there's not one question that's  
18 applicable to all of them. There's just seven photos in all. With this one that we've just  
19 tendered removed, there's six photos that I'd like the witness to look at.

20 PRESIDING JUDGE EBOE-OSUJI: And each photo comes with its own questions, is that it?

21 MR GARCIA: That's correct, your Honour, yeah.

22 PRESIDING JUDGE EBOE-OSUJI: Then we've dealt with the first photo. You can ask your  
23 questions about that.

24 MR GARCIA:

25 Q. Now, Witness, in regards to the photo that's before you, this place that you called garage,

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1 can you tell us who owned this place prior to the post-election violence?

2 A. Kikuyus.

3 MR GARCIA: I'd like to have photo KEN-OTP-0080-1216 displayed on the screen, please.

4 That's tab 4B.

5 THE COURT OFFICER: (Interpretation) Mr Garcia, is it a public photograph, please?

6 MR GARCIA: Yes, public. And it will be the case for the other photos as well. Thank you.

7 PRESIDING JUDGE EBOE-OSUJI: What does this photo appear to show on its face,

8 Mr Garcia? The point being whether the Defence would admit the photo for what is

9 apparent.

10 MR GARCIA: I thought that admission, unless I'm wrong, was applicable to the photos that

11 I was going to show, and then, unless I'm mistaken, for efficiency sake that there was an

12 admission that these photos, and there are six of them, were all taken -- or they show or they

13 depict burnings or destruction that would have occurred during the post-election violence.

14 PRESIDING JUDGE EBOE-OSUJI: Is that the case Ms Alagendra?

15 MS ALAGENDRA: That is correct.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

17 MR KIGEN-KATWA: Yes, although on our part we would probably prefer that the location

18 be identified.

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 MS ALAGENDRA: And plus, your Honour, this is the same location as the last photo. So

21 we're showing the same photo in various forms. It's a different perspective --

22 PRESIDING JUDGE EBOE-OSUJI: From different angles.

23 MS ALAGENDRA: -- of the same area, yes.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Garcia, you want to tender this now, is

25 that it?

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1 MR GARCIA: Indeed, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: All right. The photo would come in as the next in the  
3 Prosecution exhibits and then Mr Garcia will ask his questions.

4 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1216 public, will be  
5 EVD-P-OTP-00102.

6 MR GARCIA:

7 Q. Witness, the photo that you see on your screen right now, can you tell us what  
8 that -- what is depicted in that photo? What is shown?

9 A. The houses which was destruct.

10 Q. And can you tell us where exactly these houses were?

11 A. It is within town -- Turbo -- Turbo town.

12 Q. And can you tell us who these houses belonged to?

13 A. It's belongs to Kikuyus.

14 MR GARCIA: I'd like to show photo KEN-OTP-0080-1217 and 12 -- actually, just 1217 to the  
15 witness, public.

16 PRESIDING JUDGE EBOE-OSUJI: Once more, the Defence, you admit that these are photos  
17 of the PEV, post-election violence ruins?

18 MS ALAGENDRA: Yes, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

20 MR KIGEN-KATWA: Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, are you tendering as the next --

22 MR GARCIA: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: -- your next exhibit? The photo 1217 also would be  
24 admitted as the next in the Prosecution exhibits.

25 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1217, public, will be



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1 EVD-T-OTP-00103.

2 MR GARCIA:

3 Q. Now, Witness, I'd like you to look at the photo that's before you on the screen. Can  
4 you tell us what's shown in that photograph? What is the place?

5 A. It is Turbo town, near Cereal Board, and I see destructions.

6 Q. And it's near the Cereal Board, C-E-R-E-A-L board. And the place that you see that  
7 there's destruction, do you know who that belonged to prior to the post-election violence,  
8 person of what ethnicity if you're able to remember that?

9 A. Kikuyu.

10 MR GARCIA: I'd like photo KEN-OTP-0080-1219 shown to the witness.

11 PRESIDING JUDGE EBOE-OSUJI: Did you skip 1218?

12 MR GARCIA: It's the same -- it's the same place, your Honour, but from a different angle.

13 PRESIDING JUDGE EBOE-OSUJI: I thought so.

14 MR GARCIA: To spare the Chamber. We can see the destruction on the first photo.

15 PRESIDING JUDGE EBOE-OSUJI: So 1219, okay, Mr Garcia, what do you want to do with  
16 this?

17 MR GARCIA: I'd like to have that photo as well tendered into evidence as a Prosecution  
18 exhibit.

19 PRESIDING JUDGE EBOE-OSUJI: Defence?

20 MS ALAGENDRA: No objection, your Honour.

21 MR KIGEN-KATWA: No objection.

22 PRESIDING JUDGE EBOE-OSUJI: The picture comes in as the next in the Prosecution  
23 exhibits.

24 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1219 will be given the  
25 reference number EVD-T-OTP-00104.

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1 MR GARCIA:

2 Q. Now, Witness, you see the photo that's before you on the screen, can you tell us who  
3 this shop belonged to prior to the post-election violence, person of what ethnicity?

4 A. It was four Kikuyus.

5 MR GARCIA: I'd like to have KEN-OTP-0080-1223 shown to the witness. I'd like to have  
6 this photo as well tendered into evidence as a Prosecution exhibit.

7 PRESIDING JUDGE EBOE-OSUJI: Any objection, Defence counsel?

8 MS ALAGENDRA: None, your Honour.

9 MR KIGEN-KATWA: None, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: The photograph is admitted as the next in the  
11 Prosecution exhibits.

12 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1223, public, will be  
13 given the number EVD-T-OTP-00105.

14 MR GARCIA:

15 Q. Now, Witness, you see the photo that's before you on the screen. Can you tell us what  
16 is shown on that photo? What's the place?

17 A. It is a place also in Turbo, but after the garage.

18 Q. Was it a residence or a commercial business place before the post-election violence?

19 A. Commercial.

20 Q. And do you know, what was the ethnicity of the people or the person who owned  
21 this -- this place?

22 A. Kikuyus.

23 MR GARCIA: One last photo. KEN-OTP-0080-1225, Prosecution also has the intention of  
24 having this tendered into evidence as a Prosecution exhibit.

25 PRESIDING JUDGE EBOE-OSUJI: Any objection?

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1 MS ALAGENDRA: No, your Honour.

2 MR KIGEN-KATWA: None, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Prosecution exhibits.

4 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1225 shall be given the  
5 reference number EVD-T-OTP-00106.

6 MR GARCIA:

7 Q. Now, Witness, I see that you're looking at the photo on the screen. We can read "Kobil".  
8 Is this the petrol station that you were mentioning in your -- during your testimony?

9 A. Correct.

10 Q. And just to inform us, this Kobil petrol station, do you know if it was -- who it was  
11 owned by at the time prior to the post-election violence?

12 A. The owner was a Kikuyu.

13 Q. Thank you, Witness. Just one last subject to finish your testimony. You mentioned  
14 that houses were burnt in Turbo town, Turbo centre. Do you know what happened to the  
15 Kikuyus who were living in the Turbo town prior to the post-election violence after their  
16 houses were burnt?

17 A. They flee to Turbo police station.

18 Q. Did they remain in Turbo police station?

19 A. Yes.

20 Q. And do you know in what kind of conditions they were living at Turbo police station?

21 A. Yes. They were living in tents.

22 Q. Can you tell us approximately how many people were there living in Turbo police  
23 station?

24 A. There was more than 1,000.

25 Q. Did you personally see this?

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1 A. Yes. I went there.

2 Q. In what month and what year?

3 A. 2008 January.

4 MR GARCIA: I'd like to play KEN-OTP-0033-0009 for the witness. It's public.

5 THE COURT OFFICER: (Interpretation) Mr Garcia, is the video that should be played  
6 without the audio?

7 MR GARCIA: It's the case, yes, indeed.

8 (Viewing of the video excerpt KEN-OTP-0033-0009)

9 MS ALAGENDRA: Your Honour, may we know why it's being played without the audio,  
10 please?

11 MR GARCIA: We just want the witness to identify the location, your Honour. The audio is  
12 not -- is not important. And, actually, when we first played it for the witness in preparation  
13 session, we played it without the audio, obviously, so it wouldn't be leading in any which  
14 way since we wanted to see if the witness could recognise the location.

15 PRESIDING JUDGE EBOE-OSUJI: Is there a disclosure issue, Ms Alagendra?

16 MS ALAGENDRA: Your Honour, we say it is important that the volume be played, but  
17 perhaps we'll do it in cross-examination. And it may actually demonstrate something more  
18 to the Court when we do so.

19 PRESIDING JUDGE EBOE-OSUJI: And that's why I asked you is there a disclosure issue?  
20 So there is no disclosure issue?

21 MS ALAGENDRA: It's not really disclosure issue, your Honour. It perhaps may be an  
22 ethical one.

23 PRESIDING JUDGE EBOE-OSUJI: No, no, no, no. Let's not talk about ethics now. The  
24 point is you have been given this video with the sound and everything.

25 And that's the same with you, Mr Kigen-Katwa?

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- 1 MR KIGEN-KATWA: Yes, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Okay. Thank you.
- 3 Mr Garcia, proceed.
- 4 MR GARCIA: We can proceed with the sound on, your Honour. It doesn't really matter
- 5 one way or another. If it will satisfy the Defence, I have no problem with that.
- 6 PRESIDING JUDGE EBOE-OSUJI: We will leave that to you, however you want to proceed.
- 7 MR GARCIA:
- 8 Q. Witness, do you recognise what's being shown -- what was shown on that video, the
- 9 scenes?
- 10 A. It was Turbo police station.
- 11 Q. Could you tell us by just looking at that video approximately when it would have been
- 12 taken, what month, what year?
- 13 A. If I may say, it was 2008, January.
- 14 Q. Thank you, Witness?.
- 15 MR GARCIA: I'd like to have that video tendered into evidence as a Prosecution exhibit.
- 16 PRESIDING JUDGE EBOE-OSUJI: Any objection?
- 17 MS ALAGENDRA: None, your Honour.
- 18 MR KIGEN-KATWA: None on our part.
- 19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, it will be tendered with the audio, that's the
- 20 understanding.
- 21 MR GARCIA: Your Honour, I wouldn't have it any other way. It's just for playing it to the
- 22 witness. It comes with the audio, one and the same.
- 23 PRESIDING JUDGE EBOE-OSUJI: All right. The video comes in as the next in the
- 24 Prosecution exhibits.
- 25 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0033-0009, public, will be

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1 given the reference number EVD-T-OTP-00107.

2 MR GARCIA: I have one final question for the witness in private session, one minute.

3 PRESIDING JUDGE EBOE-OSUJI: Private session.

4 (Private session at 3.41 p.m.)

5 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

6 MR GARCIA:

7 Q. Now, Witness, you've mentioned a couple of times during your testimony that Kikuyu  
8 houses specifically were burnt in Turbo town, Turbo town centre. Do you have any  
9 knowledge as to how it was that the -- the people who -- who burnt these houses knew which  
10 houses to target, which houses to burn?

11 A. There were people there -- like number 3 and number 18 was there to show this is a  
12 Kikuyu house, this is a Kikuyu shop.

13 Q. (Redacted)

14 A. (Redacted)

15 Q. (Redacted) Is it number 3, number  
16 18, or both of them?

17 A. Number 3.

18 Q. And just to finish with that, number 18, who is this person?

19 A. He was together with number 3.

20 Q. Is the person of what ethnicity?

21 A. Kalenjin.

22 Q. And when you say he was together with him, what do you mean?

23 A. They were together when they were going doing things, they were together.

24 Q. Doing what things?

25 A. Like burning.

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- 1 MR GARCIA: Those are all the questions I have for the witness, your Honour.
- 2 And just in response, I know the Chamber was inquiring as to the orientation of the sketch in
- 3 regards to the map. We have someone working on that, and we have a response. And as
- 4 soon as we can have something clear we'll provide it to the Chamber.
- 5 Thank you, Witness, those are all my questions.
- 6 Your Honour, thank you for the indulgence, the 30 minutes.
- 7 PRESIDING JUDGE EBOE-OSUJI: (Redacted) And
- 8 the PIS you want to bring in, I take it?
- 9 MR GARCIA: Indeed, your Honour. I'd like to have that tendered in as an exhibit.
- 10 PRESIDING JUDGE EBOE-OSUJI: Court officer, please make sure (Redacted)
- 11 (Redacted)
- 12 The PIS comes in as the next Prosecution exhibit, PIS, protected information sheet.
- 13 THE COURT OFFICER: (Interpretation) The PIS for Witness 613 will be given the number
- 14 KEN-PIS-0010063.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, that concludes the Prosecutor's
- 16 questions for you for now. Next we will have Ms Alagendra. You will go first?
- 17 MS ALAGENDRA: Indeed, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, will begin asking you questions. Do we
- 19 do that in open?
- 20 MS ALAGENDRA: In open, please.
- 21 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go to the open session.
- 22 (Open session at 3.45 p.m.)
- 23 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.
- 24 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 25 Witness, as I informed you, Ms Alagendra will now begin her cross-examination of you.

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1 Keep in mind what I have informed you at the beginning. Listen to her questions,  
2 understand the questions, make sure you do. If you do not, ask her to repeat as you have  
3 been doing and she will repeat her questions. Once you understand the question, then  
4 answer it as briefly as possible, but then giving the information you feel is important to give  
5 in response to the question and then you stop and wait for the next question. Thank you.

6 Ms Alagendra.

7 MS ALAGENDRA: Thank you, your Honour.

8 QUESTIONED BY MS ALAGENDRA:

9 Q. Good afternoon, Madam.

10 A. Good afternoon.

11 Q. Madam, my name is Shyamala Alagendra and I will be asking you a few questions on  
12 behalf of Mr Ruto's Defence team. And before we proceed, Madam, I would like to assure  
13 you of a few things, and I want you to listen to me very keenly, please.

14 There is only one purpose in my questioning, and that is to assist the Chamber and  
15 the Judges to arrive at the truth, the truth about the post-election violence and the  
16 truth about how this case came here and why.

17 It is not my purpose, your Honour -- Madam, to in any way make you uncomfortable  
18 or to disrespect you. I can assure you of that.

19 And I'd like to add, Madam, is that we are happy to see you here because we know  
20 that you have information which will assist their Honours to arrive at the truth. Are  
21 you okay with that, Madam?

22 A. I am okay.

23 Q. Thank you.

24 Madam, the 2007 elections that took place in Kenya, it was viewed as the most closely  
25 contested elections in the history of Kenya; am I right?



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1 A. You are right.

2 Q. And, in fact, it was the first time, Madam, that an incumbent president faced a real  
3 prospect of being ousted from the State House through the ballot box; am I right?

4 A. You are right.

5 Q. Madam, on 28 December 2007, the results of the parliamentary elections were released  
6 throughout the country; correct?

7 A. Parliamentary? Repeat your question.

8 Q. The election results for the constituencies were all released on the 28 December 2007.  
9 Do you recall that, for MPs, councillors?

10 A. I can't recall.

11 Q. You can't recall the date, you mean?

12 A. Yes.

13 Q. The results announcing Mr William Ruto as the winner for MP of Eldoret North, that  
14 was released on 28 December; am I correct?

15 A. Correct.

16 Q. And I'm also correct, am I not, Madam, that Mr Ruto was declared the winner and  
17 elected MP of Eldoret North for the third time in 2007; yes?

18 A. Yes.

19 Q. And since 1997, Mr Ruto has not lost an election, has he?

20 A. No.

21 Q. And that is why, Madam, when you were answering questions for my learned friend  
22 about the tallying of the results, you said the winner was announced and it was of course the  
23 deputy president. And you answered in that way because he was the obvious choice; am I  
24 right, Madam?

25 A. Correct.

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1 Q. And he was the obvious choice, Madam, because he was the favourite of the people; am  
2 I right?

3 A. Correct.

4 Q. Madam, it's also correct, isn't it, that Mr Ruto, he secured the highest number of votes in  
5 the parliamentary elections in the country; correct?

6 A. Correct.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, not to break your flow, Witness, are you  
8 having difficulty with hearing Ms Alagendra? I notice that both of you speak with soft  
9 voices. Are you -- do you need her to speak louder, or are you happy with the volume?

10 THE WITNESS: I'm okay. I'm following.

11 PRESIDING JUDGE EBOE-OSUJI: Sorry about that, Ms Alagendra.

12 MS ALAGENDRA: I'm also happy with your volume, Madam.

13 Q. And, Madam, am I right that the supporters for Mr William Ruto, they hale from all  
14 tribes including the Luhyas, the Kikuyus, the Luos, the Kalenjins, Kisiis; that is correct, isn't it?

15 A. As in my -- in Turbo town, what I learn Kikuyus were supporting Kibaki.

16 Q. In the -- for the parliamentary elections is what I am talking about, the position Mr Ruto  
17 was standing for in the area, in Eldoret North. His support base came from various tribes,  
18 Kikuyus, Kalenjins, Luhyas, Kisiis; that's correct, isn't it?

19 A. As I say, there was another candidate from another party, which of course he has also  
20 supporters from Kikuyus.

21 Q. So are you saying that both Mr Ruto and Mr Jonathan Bee had supporters from all tribes,  
22 Kikuyus, Luos, Luhyas; is that correct?

23 A. If I may say, Ruto is -- mostly it was Kalenjin, Luhyas and Luos.

24 Q. And some Kikuyus?

25 A. Yeah and some Kikuyus.

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- 1 Q. In fact, Madam, one of Mr Rutos chief campaigner is a Kikuyu, isn't he,  
2 Mr Joseph Njoroge Kamau?
- 3 A. Correct.
- 4 Q. And also Ms Alice Wanjiku, she's an ODM official in the area, isn't she?
- 5 A. Correct.
- 6 Q. And she's a Kikuyu; yes?
- 7 A. Yes.
- 8 Q. And this is all in 2007; correct?
- 9 A. Correct.
- 10 Q. Madam, when the results were announced on 28th, there was a large gathering that  
11 went to the UG primary school to listen to the results coming out; am I correct, Madam?
- 12 A. You are correct.
- 13 Q. And both Mr Ruto and Mr Jonathan Bee, they were both present; that's correct?
- 14 A. Correct.
- 15 Q. Madam, I'm going to play you a short video, and I would like you to observe what's  
16 going on on the screen, okay?
- 17 A. Okay.
- 18 MS ALAGENDRA: I would ask video KEN-D09-0036-0100 to be played. The transcript,  
19 your Honours, is at tab 20.
- 20 PRESIDING JUDGE EBOE-OSUJI: Is it already an exhibit?
- 21 MR GARCIA: I'm sorry to interrupt, but do we have a bundle? Does the Prosecution have  
22 one? I notice we didn't get anything maybe. Maybe it's just an oversight.
- 23 MS ALAGENDRA: Yes, it is our -- it is our oversight.
- 24 THE COURT OFFICER: (Interpretation) Please confirm the confidentiality level of the  
25 video.

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1 MS ALAGENDRA: It's public, please. You may need some assistance with the sound,  
2 because our video does have sound, and we want to play it.

3 THE COURT OFFICER: (Interpretation) The Registry will assist you in playing the video.

4 PRESIDING JUDGE EBOE-OSUJI: Why don't we do this, it is now 4 o'clock, we will adjourn  
5 and return tomorrow. By then we hope that the difficulty with the system might have been  
6 sorted out. At any rate it is 4 o'clock, so we would have adjourned anyway.

7 Witness, we've come to the end of our proceedings for today. You will rejoin us  
8 tomorrow, and Ms Alagenda will continue her cross-examination. Thank you.

9 THE WITNESS: Thank you, Mr President.

10 And, Ms Alagenda, how much time do you expect to stay with the witness in cross?

11 MS ALAGENDRA: Your Honour, we were actually hoping to finish by the end of tomorrow,  
12 but given the fact that the Prosecution took until now, we may have to ask that we continue a  
13 little bit on Monday as well. But we'll try our best to finish by the end of tomorrow.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, so far do you foresee a need to  
15 cross-examine?

16 MR KIGEN-KATWA: I do not, Mr President. But I reserve my position until the end of  
17 cross-examination by the Ruto team.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 MS ALAGENDRA: And perhaps overnight your Honours can consider if we can shorten the  
20 lunch break tomorrow, and hopefully we'll finish by tomorrow.

21 PRESIDING JUDGE EBOE-OSUJI: All right. We will look at that as a possibility.

22 All right. The blinds will come down, and we will escort the witness out of the  
23 courtroom. But let's stay a little while to find out what's happening with the next  
24 witness for the Prosecution.

25 Witness, you will be escorted from the courtroom, and then the lawyers will have a

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1 little discussion about housekeeping matters we call it.

2 (Closed session at 4.00 p.m.)

3 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. The witness will be ushered out of the  
5 courtroom.

6 (The witness stands down)

7 PRESIDING JUDGE EBOE-OSUJI: We might as well stay in closed session. What is the  
8 prospect for the commencement of the next Prosecution witness?

9 MR STEYNBERG: (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: And then, Ms Alagendra, it gives you enough time to  
17 complete without the need to shorten people's lunch break, is it?

18 MS ALAGENDRA: Indeed, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will adjourn.

20 THE COURT USHER: All rise.

21 (The hearing ends in closed session at 4.02 p.m.)

22 RECLASSIFICATION REPORT

23 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September  
24 2013, and the instructions in the email dated 30<sup>th</sup> October 2014, the version of the  
25 transcript with its redactions becomes Public.